196-20M-702588(84) 373

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1C, **County of** New York

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

vs

ON SCHAEFER, ANTONIO VASQUEZ,
STEPHEN GORDON, ALEXANDER BOYER
ELEUTERIO GONZALES, JEFFREY KAL
JOEL FREEDMAN, GORDON CANNON

Defendants

BEFORE

Hon. George S. Rader, Esq.

Judge.

Sept. 4 1963
P.M. Session

CHARGE Continued trial

TRIAL (or) HEARING

APPEARANCES:

For the People Patrick McGinley

For the Defense Mr. Schiffer and
Mr. Kaplan

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS	Re-red
Joel Freedman		2	58	65	67
Mrs. Francesca Church	69	71			
Mr. Joseph Cilecek	74	75	80		

Peter J. Galati, CSR
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART IC: NEW YORK COUNTY

- x

THE PEOPLE OF THE STATE OF NEW YORK :

against : Docket No. B-6296
C14230

GEORGE CANNON, et al. : VTL
JON SCHAEFFER
Defendants : Proceedings

- x

September 20, 1963,
New York, New York

Before,

HONORABLE LOUIS A. CIOFFI,

Judge of the Criminal Court

Appearances ,

For the People

Gerard Murphy, Esq.
Ass't. District Attorney,
New York County

Philip F. Quinn, Jr.
Official Court Reporter

COURT OFFICER: Calendar Numbers 12, 13 and 14. Your Honor, on these papers, an appeal has been taken.

MR. MURPHY: A certificate of reasonable doubt has been granted, if it please the Court and an appeal is now pending. I ask the case be held pending the outcome of the appeal.

THE COURT: What date?

MR. MURPHY: No date, if it please the Court. Mark it off the calendar, please.

THE COURT: Adjourned pending appeal?

MR. MURPHY: Yes. A certificate of reasonable doubt has been granted by Judge Geller in New York Supreme Court.

COURT OFFICER: Appeal bonds have been issued. We have them in the New York City Criminal Court System.

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The foregoing is certified to be a true and correct transcript of the proceedings.

Philip J. Quinn Jr.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 1C NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK -against- JON SCHAEFER, ANTONIO VASQUEZ, STEPHEN GORDON, ALEXANDER BOYER, ELEUTERIO GONZALEZ, JEFFREY KALB, JOEL FREEDMAN and GEORGE CANNON, Defendants.	Continued Consolidated Trials.

September 4, 1963
Afternoon Session

100 Centre Street
New York 13, N. Y.

Before:

HONORABLE GEORGE S. RADER,
Presiding Judge.

-ooOoo-

Peter J. Galati, CSR
Official Court Reporter

JUDGE RADER: Mr. Freedman, you were on the stand and I remind you you are still under oath.

CROSS EXAMINATION

BY MR. McGINLEY:

MR. McGINLEY: May I begin?

JUDGE RADER: Yes, certainly.

Q Mr. Freedman, did you ordanize this particular demonstration?

MR. KAPLAN: I object to the word "organize". Can you be more specific?

MR. McGINLEY: I can't conceive of the word being more specific.

JUDGE RADER: Unless Counsel wants to suggest one.

MR. KAPLAN: Well, I suggest he merely elicits the circumstances and facts. This is similar to the blinking, stopping, and left turn and waving on by the Police Officers.

JUDGE RADER: Overruled.

MR. KAPLAN: Exception.

Q Did you organize this demonstration?

MR. KAPLAN: I further object to the use of the word demonstration, it is a generic term.

JUDGE RADER: Sustained as to the word

demonstration.

Q Did you organize the filling of the truck with debris that you mentioned this morning?

A Could you clarify in terms -- the term organize. What organize means.

Q Were you the brains of the outfit?

MR. KAPLAN: I object, your Honor.

MR. McGINLEY: I withdraw that.

JUDGE RADER: Let me put it this way. I understood you to say that you were chairman of the CORE Chapter at N. Y. U.?

THE WITNESS: That's correct.

JUDGE RADER: And did you take with you members to the premises at Eldridge Street?

THE WITNESS: That is right.

JUDGE RADER: Who were the members?

THE WITNESS: There are more than 60 members in the chapter.

JUDGE RADER: Which of them assisted you?

THE WITNESS: They all did, your Honor.

JUDGE RADER: All 60. Which of the defendants are members of your CORE Group?

THE WITNESS: In terms of actual members, Sandy Boyer, Steve Gordon and Jeff Kalb.

JUDGE RADER: Now, did you direct their activities?

THE WITNESS: I did.

JUDGE RADER: Is that what you wanted?

MR. McGINLEY: Yes, your Honor. Thank you?

Q You directed their activities in placing this garbage into the truck to begin with?

JUDGE RADER: Strike out the word "garbage". Let us now use debris so there will be no mistake.

MR. McGINLEY: Very well.

JUDGE RADER: No objections from defendse counsels?

MR. KAPLAN: No.

Q Did you direct them in conjunction with yourself to placing the debris into the truck?

A The truck --

MR. KAPLAN: Excuse me. May I approach the bench?

JUDGE RADER: Yes.

(Bench Conference)

MR. McGINLEY: Your Honor, People have no objection to any witnesses who are purely and simply character witnesses to remain in the court room during any of the testimony. However, we would insist as we did before trial, any other witnesses to the facts or events be excluded.

JUDGE RADER: That's all right.

MR. KAPLAN: Yes, sir.

Q I believe the last question I asked, if you directed these other defendants in conjunction with yourself to fill the truck with debris on or about August 21, 1963?

A I helped to direct. There were others, others who were taking charge of the actual loading.

Q Did you take charge of, direction of the loading?

A No.

Q You are sure you are not being modest now?

A I did not take direct charge of the loading. There were other things occurring at that time

Q How long have you been active in CORE?

MR. KAPLAN: I object. It's not material.

JUDGE RADER: Sustained.

Q Who rented the truck?

A I did.

Q And from whom did you rent it?

A Perry Truck Rentals, 132 Perry Street.

Q Did you make arrangements with Perry for a driver for this particular truck?

A Yes. In terms of these stipulations of the agreement which was signed with Perry Rental was that a licensed driver would be provided for the truck.

JUDGE RADER: When he says driver, he didn't mean the generic term driver, he means a specific person who drove it.

A No.

Q In other words, did you just get the truck at Perry, or did you get a truck and driver from Perry?

A A truck.

Q So that means you got the driver yourself; is that correct?

A That is correct.

Q And what did you do to get a driver, did you phone a particular individual?

A I phoned, yes.

Q Mr. Cannon; is that correct?

A That's correct.

Q Now, had you worked with Mr. Cannon in the past in any way at all?

A No.

MR. SCHIFFER: I object. The record already shows the witness testified that he was not previously acquainted with Mr. Cannon before that telephone conversation.

JUDGE RADER: That was direct testimony but it also may be questioned on cross-examination. Overruled.

Q You didn't know Cannon prior to August 20, 1963; is that correct?

A That is correct.

Q Now, did someone point out Cannon to you or tell you of his availability as a driver of the truck?

A Someone -- I was told that Mr. Cannon was a truck driver and that he might be -- be willing to drive a truck.

Q So you phoned him sometime during the day of August 20; is that right?

A That's correct.

Q I believe you said that during your conversation with Cannon he wanted to know if there was any danger of an arrest?

A Yes.

Q Do you recall what he said specifically?

A In substance, he wanted to be -- if we intended to break any laws, if there was any danger involved to him and this was the substance of the discussion.

JUDGE RADER: Obviously there was

something that had been previously discussed, a conversation prior to the time that defendant Cannon posed this question?

THE WITNESS: Yes, yes.

JUDGE RADER: Give us the substance of the conversation which led to the query?

THE WITNESS: I spoke to Mr. Cannon and told him that -- conditions of the buildings on Eldridge Street, were very bad, that the buildings were vermin infested that there were large areas in the building --

JUDGE RADER: That's not part of the conversation.

THE WITNESS: This is the background to the conversation.

MR. KAPLAN: I submit he is merely answering the Court's question.

JUDGE RADER: Go ahead.

THE WITNESS: That the walls had large holes in them, that children had been bitten by rats, that the ceilings were falling, that there was no hot water and that there was very little heat provided in the winter, and there had been an invasion of rats.

Q What did you ask him to do --

MR. KAPLAN: I don't think he was

through with the answer.

MR. McGINLEY: I think he was through, and this court is being used as a forum --

MR. KAPLAN: I object to that. I object to the term used by Mr. McGinley --

JUDGE RADER: Will you be quiet. Let's not clutter the record unnecessarily with personalities.

MR. KAPLAN: I have great respect and I know his abilities, and I know --

JUDGE RADER: Mr. Kaplan, I asked you to be quiet please. Now, I asked for the substance of the conversation, which specifically led to the query by defendant Cannon as to whether there were any danger of arrest. I don't want the whole of the conversation. I just want that relative portion or related portion of the conversation which caused him to make the query which he did.

THE WITNESS: I told him that we were -- this is directly related to the further conversation, of the conversation.

JUDGE RADER: Excuse me a moment. Let me put it this way. Did you tell him what was going to be on the truck that he was going to drive?

THE WITNESS: Yes, I did, your Honor.

JUDGE RADER: Did you tell where the

material was to be gathered from?

THE WITNESS: Yes, your Honor.

JUDGE RADER: Did you tell him what you were going to do with the material and where you were going to take it?

THE WITNESS: I did, your Honor.

JUDGE RADER: What did you tell him with respect to where you were going to take it and what you were going to do with it?

THE WITNESS: I told him that we were going to collect rubbish from the Eldridge Street area, from behind the building, 203 through 315 and from the street, and the interior of the building and so on, and that we were going to load it on to a truck and take this evidence down to the Municipal Building and to unload it from the truck and to present it as evidence to Commissioner Birns, Department of Buildings and Housing, and to Deputy Commissioner Gribetz as evidence that this existed in the building on Eldridge Street; and in general --

JUDGE RADER: That's what caused him to ask if there is any possibility of arrest or breaking any laws; is that correct?

THE WITNESS: That is correct, your Honor.

JUDGE RADER: Incidentally, while talking about the rubbish -- did you collect the rubbish when it was put on the truck?

THE WITNESS: I did not, your Honor.

JUDGE RADER: Do you know who did?

THE WITNESS: I could not say with any degree of accuracy because many people, tenants were there, there were many people who were collecting it.

JUDGE RADER: Well, then should I conclude that you had no personal knowledge as to whether or not this material did come from these buildings?

THE WITNESS: No, your Honor, I know it came from the buildings because in particular, the whole building, 205 extended back and directly behind 205 there is a wall which contained a tremendous amount of, of this debris, of this material, and I did on many occasions walk through this hall and observe members of CORE and tenants carrying this rubbish from behind, from the area behind building 205 through and to the truck and I observed --

JUDGE RADER: In other words, you saw them carrying out from the rear of one of the buildings on to the truck?

THE WITNESS: Yes, that's correct.

JUDGE RADER: That you did observe?

THE WITNESS: That's correct.

Q Now, did you observe any of these defendants now before the Court do such things, namely, carry garbage and rubbish from the building on to the truck?

A I did.

Q You did?

A I did.

Q Now, which defendants before the Court now did you see do that?

A Schaefer. I cannot, other than Mr. Schaefer, I cannot attest with any degree of assurance that -- what other defendants did.

Q Now, was Cannon to be paid for driving the truck that day, August 21?

A No.

Q Did you speak about payment over the phone to him?

A No.

Q Didn't Cannon ask you whether he was to receive any remuneration for driving the truck?

A No.

Q Did you tell him when you first phoned him that he was doing this gratis?

A It was understood.

Q Will you tell us how it was understood?

A It was never brought out payment would be involved in any way.

JUDGE RADER: Do I understand that: you spoke to the man, asked, you wanted to hire him for the day, to drive the truck for the day. Then did you discuss whatsoever what his payment for his services would be, or whether he was doing it gratis, or whether he wanted to receive payment, or how much payment was to be, if any; the terms of the engagement?

MR. SCHIFFER: I hesitate to interfere your Honor, the fact of the matter is that Mr. Cannon knew this CORE group.

JUDGE RADER: Well, you stated it. He hasn't. That's exactly what I am driving at. I think this record should be more explicit for his own benefit.

Q Did you have any dealings with Mr. Cannon as regards payment for services, length of services and anything else relating to employment?

A No. But -- if there was no actual discussion of any funds -- however, Mr. Cannon, I believe is a member of CORE Chapter and this was understood.

Q When you spoke with Mr. Cannon on the phone this is the first time you had ever spoken to him, in any way, either on the phone or any other way; is that correct?

A That's correct.

Q When you called him up, it was as though a stranger were calling him?

A I had spoken with his wife previously and she had informed him what the nature of this thing was.

Q Well, when you called up then on 20th of August, did you say, "My name is Freedman, I am from CORE, and I have a job to do for you," or, "I have a job for you to do for me"?

A I discussed --

JUDGE RADER: In substance that was the conversation?

A Would you repeat it.

Q I withdraw that. I will ask another question. When you discussed arrangements with Cannon, when he got on the phone, with exception of the conditions that you explained to us, that you say existed at Eldridge Street, what did you say to him?

A I said to him, "I am Joel Freedman." "Yes. My wife has told me that you called," and this was the introductory statement.

Q And what followed after the introductions, did you say "I have a job for you?"

A I told Mr. Cannon the background and nature of it, what this was about and how CORE was involved and why CORE was involved and this was the background.

Q And he agreed to drive the truck; is that correct?

A That's correct.

Q No mention being made of payment or of hours or anything else relating to employment?

A Only mention of hours was that the following day, on Wednesday, I was to meet him at his house at a quarter of twelve.

Q Quarter of twelve on the 21st, that would be?

A Yes.

Q Was the truck to be at his house or were you going to bring the truck to his house or was somebody else going to bring the truck to his house?

A No one was to bring the truck to his house.

Q Where was the truck picked up on the 21st of August?

A 132 Perry Street.

Q Was it just sitting out there when you got there?

A No. It was in the garage.

Q That's the office, I assume, of Perry Trucking Company?

A That's correct.

Q Now, did you speak to all of these defendants regarding their participation in this endeavor?

MR. KAPLAN: I object, your Honor. I object to the use of the words "all of these defendants".

JUDGE RADER: If he doesn't know, he can say no.

Q I will change it. Any or all of the defendants?

A Yes.

Q Which any or all?

A All.

Q And they all agreed to participate the next day, or rather on the 21st --

MR. KAPLAN: I object to that too, your Honor.

JUDGE RADER: I don't know the basis of the objection. If you think this is leading, this is cross-examination. He is permitted to lead.

MR. KAPLAN: It is not leading, your Honor. I think it would serve the record much closer if Mr. McGinley enumerated each one by name.

JUDGE RADER: We can't tell Mr. McGinley how to conduct his cross-examination.

MR. McGINLEY: I'd love to do that.

JUDGE RADER: Just a minute. Let's not clutter up the record. The Court deems it unnecessary.

MR. McGINLEY: If the particular question said all witnesses seated before the Court agreed to participate, I don't see any reason to give their names one by one.

JUDGE RADER: Proceed. I made my ruling. Overruled.

Q So all of the defendants agreed to participate; is that correct?

A Yes, but what time are you talking about.

Q Well, when did you first speak to anyone of these defendants regarding participation on the rubbish to the truck? Approximately?

A Possibly a week before, week and a half before.

Q Now, did you speak to all of them the same date or was it one one day and someone next day?

A The latter, then at times together also.

Q Now, on the day before August 20, or early morning, August 21, did you have a meeting, yourself and all of these defendants?

A Early in the morning -- what do you mean by early in the morning.

Q Early in the morning of August 21. By early morning, any time before you actually got to City Hall in the truck, did you meet with them that morning?

A Yes, we met that morning.

Q And did you discuss your various parts?

A Yes, we did.

JUDGE RADER: In other words, you planned it? You planned these activities?

THE WITNESS: Yes.

Q What was your part to be -- I withdraw that question. Where did the rat come from? I believe you tried to answer that question on direct examination, and you didn't know of your own knowledge; is that correct?

A I stated --

JUDGE RADER: He said it was given by one of the neighbors, one of the neighbors, but he didn't actually know where it came from.

Q Who put the rat into the cage?

A The rat saw or smelled, whatever it was, a piece of bread with peanut butter and decided to go in the cage.

Q Who put the peanut butter in the cage?

A A number of people, along with some tenants placed --

Q Again --

A -- placed it.

Q Again you have no direct knowledge. Did you see the rat go into the cage to get the peanut butter?

A I did not.

Q What was the first time you saw the rat and the cage?

A 198 Eldridge Street.

Q On what day in August? August 21st?

A Before that period of time.

Q You saw the very rat?

A That's right.

Q And this very cage?

A That's right.

Q Now, on the 21st of August, did you see or did you affix the cage with the rat to the truck?

A Could you repeat the question.

Q Did you or did you see anybody affix the rat in the cage to the truck?

A I did not.

Q When for the first time on the 21st did you see the rat affixed to the side of the truck?

A On Allen Street.

Q How did it come to your attention?

A It was there on the side of the truck, I saw it.

Q Prior to that, you didn't see it?

A No, I did -- I did not know.

JUDGE RADER: Then is it correct to say that you did not see it prior to the first time you saw it on the truck; is that right?

THE WITNESS: Yes, sir.

Q Now, when you saw the rat on the side of the truck, it struck you a bit unusual, didn't it, it is not every day you see a rat on the side of a truck?

A Considering the situation, I didn't find it unusual.

Q To be on the side of the truck? How many trucks have you seen with rats on the side of them, in a cage?

A None before this.

Q At any rate, did you ask where this rat had come from?

A No, because --

MR. KAPLAN: I object.

JUDGE RADER: Overruled.

Q Do you know who put the rat on the truck?

A No.

Q It was a live rat, incidentally?

A That's correct.

Q How many rats were in the cage -- just one?

A One.

Q Now, when the truck left Eldridge Street, how many people were on it?

A Eight.

Q That includes yourself?

A Correct.

JUDGE RADER: Did you say Eldridge or Allen?

Q I said Eldridge at this point?

A Eldridge Street, no.

Q Let's go to Allen Street. At Allen Street, there were eight?

A That's right. When the truck left.

Q When the truck left Allen Street, how many were on or in the truck?

A Eight people.

Q Now, would you enumerate those people for us? By name, if you can?

JUDGE RADER: Would it include all of the eight defendants.

Q Is that correct?

A It would.

Q Now, did you all have battle stations, as it were, on portions --

MR. SCHIFFER: Objection, your Honor.

Q Withdraw it. Did you all have posts on the truck?

A Did you mean planned positions on the truck?

Q Yes?

A There were no planned positions.

Q Were positions taken?

A Positions were taken on the truck.

Q Now, were positions taken catch-as-catch-can or did somebody say, you go here and you go there, I will stay here?

A It was a combination of both factors; one person walked to the front, another into another area.

Q When the truck left Eldridge Street or Allen Street, would you say that you were in charge of the group on the truck?

A Yes.

Q Who directed the movements of the truck, the particular route that was followed on the way down to City Hall?

A Driver of the truck.

Q That's Cannon?

A That's correct.

Q Now, did you ever holler down to Cannon make a left at the next turn, make a right, or did you sit back or stand in the truck, whatever it was, and let Cannon take any route that he saw fit?

A I didn't holler down to Mr. Cannon.

Q Did you speak to him or indicate what route he should follow?

A Yes.

Q How did you do that?

A We spoke, a number of people spoke, as a matter of fact.

Q In other words, you are quarreling with the use of the words "holler down", you didn't holler but did you speak down to him?

A No, I did not. Well, before the truck left Allen Street, a number of people had spoken with Mr. Cannon and Mr. Cannon had spoken with a number of people.

Q Including yourself?

A Including myself, concerning the route.

Q Incidentally, at Eldridge Street, did you see Policemen at various positions along the street?

A There were Policemen on Eldridge Street, yes.

Q And you saw Police cars, at least one Police car at that point?

A I saw Police cars, there was one Police car which was parked, another one continued through the area.

Q Did you have any conversation with any Police Officer on Eldridge Street?

A No.

Q You didn't have any conversation with a Police Officer at any time; is that correct?

A At any time?

Q At any time of the day of the 21st, with exception of answering questions of pedigree at the station house?

MR. SCHIFFER: Can you limit that before the arrest?

MR. McGINLEY: Surely before the arrest.

A On Allen Street, I was conversing with one of the Police Officers there, and in one instance the Police Officer said, "I want you -- I want you to obey all of the Laws. I want you to watch what you do with the truck. If you break the Laws, if you break the Law, I will be there to enforce it." I inquired, "Well, I guess you are going to follow us downtown," and he said, "Oh, yes."

Q Am I correct to say that he was Sergeant Levine?

A I do not know the gentleman by name.

Q Do you know if he was a Police Sergeant? Did he have three stripes on his arm?

A I don't know.

Q All right. What route did you follow from Eldridge Street?

A From Eldridge Street?

Q Yes?

A I was not on the truck from Eldridge Street.

Q Where did you get on the truck?

A On Allen Street.

Q On Allen Street. Who was on the truck when you got on, these other defendants were on the truck when you got on board?

MR. KAPLAN: He asked and answered that twice before. I object.

MR. McGINLEY: I'm sorry if he has. I don't recall the answer he gave.

JUDGE RADER: He said when he got on the truck, there were eight people all of which were the defendants.

Q That's on Allen Street; right?

A Yes.

Q Now, which route was followed. I withdraw the question. Which route did the truck follow when it left Allen Street?

A The truck went right on Rivington up to, it must be Forsythe Street, right on Forsythe to Houston Street, left on Houston going West to Lafayette and left turn on, to Lafayette from Houston Street, headed in a southerly direction.

Q Then you followed Lafayette Street on down to Centre Street?

A That is correct.

Q All the while you saw Police Officers when you got into lower Lafayette Street and Centre Street area?

A That's correct.

Q You knew why they were there, didn't you?

A Yes.

Q Incidentally, were you in the van of the truck as it proceeded south as distinguished from the cab?

A Yes.

Q Were you sitting or standing as the truck went along?

A I was standing.

Q You were standing all the time the truck went along?

A Correct.

Q Now, I want you to tell us when you got to Centre Street, before it went into Park Row, what lane was the truck in?

A It would be easy for me if I would be able to look at a map.

Q Sure. I'm sorry. Take a look at it?

A All right.

Q Do you see where Lafayette comes into Centre Street. Take it from the top of Centre Street on down at the point --

A Top of Centre Street which is the intersection of Reed and Lafayette?

Q Right?

A That's correct.

Q That's correct. What lane was the truck in at that point?

A The truck at that point was in the left lane.

Q Centre Street is one way down?

A Pardon.

Q Is Centre Street a one-way street?

A Yes.

Q One way which way?

A One way south. Until Park Row is divided later, but Centre is one way, is one way south.

Q And you were in the left lane all the way down Centre Street?

A Yes.

Q When you passed Chambers Street, where Chambers intersects with Centre, were you seated or standing in the truck?

A Standing at all times.

Q And the truck stayed in the left hand lane as it got in Park Row?

A There was a truck in the left lane and the truck from Centre to Park Row, to that area at Park Row was, I would say, traveling in the left lane.

Q And most probably in the center lane?

A Yes, but with definite left hand leanings.

Q Leanings?

A Yes.

Q Now, as it progressed along Centre Street, the entire part of Centre Street, I am sorry. After you passed the intersection of Centre and Chambers, you say the truck was still in the middle lane but veering towards the left. Were there cars left of the truck at that point?

A What point?

Q At the point right after the intersection of Centre and Chambers and proceeded south in the center lane, veering towards the left?

A Just past Municipal Building we had been on the left hand side of Centre Street.

Q So that means as you passed Municipal Building, there were no cars to your left?

A There were some, but the street, I believe in this area here, on the corner of Chambers widens so that -- in other words, we were not directly left. Up until the northern side of the Municipal Building, we were in the left lane and then from the southern side of the Municipal Building, the Brooklyn Bridge exit being the divider, the truck turned more to the center, with left leanings.

Q Well, which lane was it in? If there is a choice between the center lane and the left hand, you would have to say the center lane, wouldn't you?

A Yes.

Q Incidentally, at which point did you see --

JUDGE RADER: Now, do I understand you to say as you approached the Municipal Building, you were in the left lane?

THE WITNESS: Yes.

JUDGE RADER: Then before you left the Municipal Building, some how or other you got over into the center lane?

THE WITNESS: Yes. Well, there were so many Policemen in front of the Municipal Building which made going to the building impossible; there were so many Policemen that were -- stood out in front and waved the truck on and as far as I could tell, if he continued in the path --

MR. McGINLEY: Your Honor, I object to what would have happened if they had continued. That is conjecture.

JUDGE RADER: Sustained.

A In other words, the truck being in the left lane, approaching the Municipal Building, then when we were -- we were kept away from the Municipal Building by the Policemen.

JUDGE RADER: Is it correct to say that you were in the center lane? In the left lane until you were obliged to go into the right -- go to the right into the center lane by reason of the traffic or other obstructions?

THE WITNESS: Well, by reason of the Police directing us away.

Q Now, you said there was a sign at Spruce Street?

A Yes.

Q At the intersection of Spruce, the car made a left turn; is that right?

A Must turn left.

Q When did you first see that sign? Where was the truck when you first saw that sign?

A The truck was, the truck had just been -- at that time I did not see the sign.

Q Well, I asked at what time did you see the sign?

A I saw -- I noticed the sign, well, before that period of time.

JUDGE RADER: Well, the question was; where were you when you first noticed the sign? Is that what you are saying?

MR. KAPLAN: Are you speaking of south of Lafayette, prior to that time.

JUDGE RADER: This is the point where he approached the sign which says, "truck left lane, must turn left", which is at the corner of Spruce and Park Row; is that correct?

MR. McGINLEY: That's correct. They have taken the trip down Centre. Now, we are on Park Row.

JUDGE RADER: That is the question. Where were you when you first saw that sign? Anything you wish to say?

MR. SCHIFFER: No, your Honor.

THE WITNESS: You mean that?

Q That day?

A I --

Q If in fact --

A He was making a left hand turn in the Volkswagen.

Q Am I correct to say all the while you were in the truck, heading south in the area of the Municipal Building and just north of City Hall, you didn't notice that sign about "left lane, must turn left"?

A No.

Q It was a prior occasion when you were in your own automobile that you saw that sign and knew it did exist on the day that you were in the truck; is that correct?

A It was not my own automobile.

JUDGE RADER: The point we are trying to establish is whether or not you knew of the existence of that particular sign, at that location. Now, I believe, you did say that previously that morning in someone's Volkswagen, you made the trip and you now say you saw that sign upon that occasion; is that correct?

THE WITNESS: That is correct.

JUDGE RADER: All right.

Q So you didn't see the sign on this occasion, by this occasion I mean August 21st while you were in the back of the truck?

A That's correct.

Q Incidentally from the point that you were sitting in the truck, could you see out of the truck from all sides?

MR. KAPLAN: I object. He was standing.

JUDGE RADER: He was standing.

Q That's what I meant. From the position you were standing, could you see out of the truck from all angles?

A There -- I could see broad distances. There were certain blind spots on the truck where I would not be able to see what was going on, within say a half foot of the truck.

Q Would that be the side of the truck to the east and west of you?

A The east and west?

Q Your truck faced south?

A Yes.

Q And north is above, and east and west would be to your sides?

A I could see, certainly west and since I was, I was in a position in the truck where I could fairly easily observe both sides, particularly the west side.

Q You could see Police Officers on both sides, both sides of Park Row?

A Both sides. I noticed most Police Officers were to the west side and around the back of the truck, and looking out over the top I could see Police Officers in front of the truck also.

Q Who else was in back of the truck with you at that particular point, at the time you were in the center lane of Park Row, just south of the Municipal Building?

A Yes. All of the defendants but Mr. Cannon and

Mr. Gordon.

Q Was Gordon up in front with Cannon?

A That's correct.

Q Now, the truck came to a halt in the center lane of Park Row, did it not?

A It did not.

Q Did you hear the Police Officer testify yesterday that the truck came to a halt, Police Officer Houston?

A I did.

Q That didn't happen?

A That did not happen.

Q I believe you said this morning, you had slowed down; is that what happened?

A It slowed down.

JUDGE RADER: He said slowed down but suddenly veered to the left.

A Suddenly veered to the right when it --

Q Weren't there any cars to the right of the truck at that point the truck slowed down?

A At what point do you mean? What point? The truck slowed down just as it passed the Municipal Building, when traffic -- we had a left turn.

Q That's the point I mean. Weren't there any vehicular traffic to the right of your truck at that point?

A I don't know.

Q You don't know?

A I don't believe there were.

Q You are just guessing now; is that correct?

MR. KAPLAN: I object. He already said he didn't know.

MR. McGINLEY: All right.

Q Now, was there any time specifically between the time the truck slowed down and the time it veered to the right, or was that all one transaction?

JUDGE RADER: Or was it a continuous thing?

A The truck just passed Municipal Building, and adjacent to the subway, slowed down to about 20 miles per hour, somewhere around this, and when finally we were pulled into --

Q Mr. Freedman, I am just asking you now this very simple question.

A There were two times when it made a slow down. One somewhere adjacent to the subway and the other is when the truck was pulled in, obviously it had to slow down to stop.

Q Was it one continuous transaction or one continuous event, the truck slowed down and veered to the right, all at once, did it slow down so as to come to a halt and then veered to the right?

A No. It slowed down and, around the subway it possibly accelerated slightly until which point it got near the Plaza when the truck was brought in.

Q Well, now, how was the truck brought in? Did you give the order to pull in City Hall Plaza?

A No, no. I first noticed the truck was turning into the Plaza and it was not meant to do this. I looked up, I saw that there was an officer to the front of the truck, I believe, who was motioning. This is all I noticed and after that period of time, --

Q Well, you were standing in the truck at that time?

A That's right.

Q Weren't you looking forward as it went south?

A I was observing all directions, as many as I could at one time.

Q You didn't see any officer step out in the road, say, "come over here", did you?

A I heard no officer make any statement. I noticed the officer was coming forward, gesturing.

Q Where was the officer standing when you saw him gesturing? Was he in the roadway?

A No, to the front of the truck.

Q That put him in the middle of Park Row, wouldn't it?

A I don't believe he was in the middle of Park Row.

Q Was he in the right hand lane of Park Row, or did you really see him do this at all?

MR. SCHIFFER: Objection.

JUDGE RADER: Overruled.

A There was an officer who gestured and I saw the officer gesturing.

JUDGE RADER: Then you saw him?

THE WITNESS: I saw the officer gesture.

JUDGE RADER: You saw him.

Q Where did you see him gesture? Where was he when he gestured?

A I cannot attest to the exact position.

Q Who was the officer that gestured?

A I do not know.

Q Was it Officer Houston who testified yesterday afternoon?

A I don't know.

Q Well, then the truck came over into City Hall Plaza; is that correct?

A That's correct.

Q What's the next thing that happened then?

A When the truck pulled into --

Q City Hall Plaza?

A City Hall Plaza, there were many Police Officers in the area. The silver gray patrol car pulled up behind the truck, and then there was -- you see, initially there was confusion because we had not planned to go to --

MR. McGINLEY: I ask that be struck out as not responsive.

JUDGE RADER: Sustained.

Q Mr. Freedman, did you say on direct examination this morning after the truck stopped still at City Hall Plaza that you stayed --

A We stood there.

Q Weren't you standing all along?

A We had been standing all along.

Q That's right. Did there come a time when you stood about one minute; is that right?

A Approximately.

Q What did you see as you stood there for one minute?

A I saw the Police Officers were gathered about the truck.

Q Was it then that you directed that the debris and rubbish be thrown off the truck?

A No.

MR. SCHIFFER: Objection.

JUDGE RADER: Overruled. That is correct?

THE WITNESS: No.

Q When did you direct the rubbish be thrown off the truck?

A There is a sequence of events which occurred before this which I will clarify, this point.

Q I just want to ask that question.

MR. KAPLAN: I object to the question.

JUDGE RADER: Overruled.

Q Who directed it?

JUDGE RADER: Was it directed. It pre-supposes that it was directed.

MR. McGINLEY: Very well.

JUDGE RADER: In that respect, it is objectionable.

Q Was a direction given to throw off the garbage from the truck at this point in City Hall Plaza?

MR. SCHIFFER: We had agreed to limit --

JUDGE RADER: Use the word debris.

MR. McGINLEY: Very well.

Q Was there an order or direction given to throw the debris off the truck, once the truck stopped at City Hall Plaza?

A No, there was no such order.

Q Did you just grab anything you could find and throw it over immediately --

A No.

Q Did you see anybody in the truck throw debris off the truck while it was in City Hall Plaza?

A Would you clarify the time and sequence please.

Q When it stopped?

A When it stopped, as I stated, there was a one minute wait while the people in the truck just stood. This was the period of time Mr. Gordon dismounted the cab of the truck and came to the rear of the truck and attempted --

MR. McGINLEY: Objection, your Honor.

JUDGE RADER: Just say what he did, that's all.

MR. KAPLAN: Would your Honor caution the witness to merely answer the question put to him.

JUDGE RADER: I have tried to confine him. I have tried to ask him to be responsive, but in the interest of justice, I am trying to have this man feel comfortable on the stand. I don't want to have him feel harassed. I don't want him to feel that. Now, this man I am sure has no experience in court. I don't want to befuddle him, but in response to questions, I must say this to you, that when asked the question, just answer the question that is framed. Don't offer any other evidence.

THE WITNESS: Yes, your Honor.

JUDGE RADER: If there is anything which you believe should be presented to the Court, don't be too much concerned. Your attorney will then examine you again. I am sure he will then bring it to the Court's attention by questions, any evidence that is pertinent to this issue, and which may be helpful. Don't try to anticipate any of the events that flow from your testimony. Just answer the question; that's all.

THE WITNESS: Thank you, your Honor.

Q Did you hear -- this is a different question. I will come back to that one. Did you hear three Police Officers testify as soon as the truck stopped at City Hall Plaza, after it was pulled over, that debris was immediately thrown from the truck?

MR. SCHIFFER: I object. I object, that is not the record in the case.

JUDGE RADER: Sustained. He said between 30 seconds to a minute elapsed.

Q During that interval that elapsed, did you hear the Officers say that thereafter they saw the debris being emptied from the truck?

MR. KAPLAN: I object. That's not quoting the record correctly. Officer Dillingham and Officer Houston didn't testify anybody threw anything.

JUDGE RADER: One of the officers. Officer Brown.

MR. McGINLEY: Well, the other two testified that this was a spontaneous thing once the truck stopped, immediately debris was coming off.

JUDGE RADER: Anywhere in 30 seconds to one minute.

MR. SCHIFFER: They did not use the word "hurl" or use the word "throw".

JUDGE RADER: Please, let's not get into that. Let's not get into semantics. Let's all understand that this case is not being tried by a jury of twelve. I am the Judge and I am the Jury. I think you should depend upon me to distinguish between the word thrown as against the word dropped, as against the word hurled and pushed, or anything.

MR. SCHIFFER: Or unload.

JUDGE RADER: Or unload. I hope you have enough confidence in the Court to know that I am not going to be influenced by semantics. I will make sure to find out how this was done.

MR. SCHIFFER: Thank you.

Q Did you hear any Police Officer's testimony to the effect that almost immediately after the truck stopped, whether it be 30 or 40 seconds' interval that debris was thrown from the truck?

A I heard testimony to the general effect.

Q Well, is that right?

A Yes.

Q Mr. Freedman, who was the first person to throw anything from the truck?

A I don't know.

Q Did you throw anything from the truck?

JUDGE RADER: He already testified.

A Nothing was thrown from the truck.

JUDGE RADER: Mr. Freedman, you didn't get the benefit of the words that I used, whether it was pushed over, or thrown over hardly makes any difference to this Court in its interpretation of the act that took place. So let's not deal in word use but in the general conduct that you are attempting to describe.

Q Well, in order to make the witness at home, I will use the word unload. Did you unload any debris from the truck?

A I did.

Q You what?

A I did.

Q Did you see anyone else in the truck unload any of the debris?

A Yes.

Q Whom did you see?

A Mr. Boyer, Mr. Vasquez, Mr. Rodriguez and Mr. Kalb.

Q Am I correct in stating that's five people, including youself?

A Correct.

Q Then the Police got up to the truck, did they?

A They did.

Q How many Police got up to the truck?

A I saw -- well, there were two Policemen who entered the truck through the rear who grabbed me and took me off the truck.

Q What were you doing at the time you were grabbed by these Policemen?

A I was in the process of unloading some of the evidence.

Q Did you see any officer get on in front of the truck, in other words, climb up the cab, down the roof and into the back?

A No.

Q Did any officer tell you to stop unloading this refuse?

A No.

Q Where were the other defendants when you climbed down from the truck, if you know?

A They were -- I don't know because the officers took me along, I was unable to look back. I was being propelled forward out of the back of the truck.

Q Now, at the time you got down to the ground, I think, you were at the rear of the truck, the left rear of the truck to be more exact?

A Yes.

Q Who else was there with you in addition to Police who were there? In other words, which of the defendants were at the rear of the truck with you?

A At that particular point?

Q That point, yes?

A Mr. Schaefer and Mr. Boyer.

Q Anybody else?

A I was joined by -- short time thereafter by Mr. Vasquez and Mr. Rodriguez.

Q Now, did there come a point --

A And --

Q Was there somebody else that also joined you?

A Yes. Mr. Kalb also.

Q Anybody else?

A No.

Q Did there come a point when all of the people just mentioned, including yourself, clasped arms and formed a circle?

MR. KAPLAN: I object. I don't think the people clasped arms to form a circle.

JUDGE RADER: He is asking whether he did or not. Read the question.

(Question read back.)

JUDGE RADER: He is only referring to defendant and persons named who were standing behind the truck. I know you don't intend to do this, Mr. Kaplan, but objections sometimes answer questions, and I ask that you frame your objections when you have some, so as not to suggest the answer to the defendant.

MR. KAPLAN: Very well, your Honor.

JUDGE RADER: Now, answer the question. Did there come a time when you and the other persons mentioned, Schaefer, Boyer, Vasquez, Kalb and Rodriguez formed a circle by clasping arms?

THE WITNESS: I don't understand all of the people mentioned clasped arms.

JUDGE RADER: Any part of them, any part of them?

THE WITNESS: Yes, yes.

JUDGE RADER: Who was it?

THE WITNESS: Myself and Mr. Schaefer.

Q Just two of you clasped arms?

A Originally yes; there might have been one more person.

Q Here is People's Exhibit Three, see if that refreshes your recollection?

A Yes.

Q It does?

A Yes.

Q Who else clasped arms with you?

A Myself with Mr. Schaefer and I believe it's

Mr. Rodriguez but I am not sure, it might have been.

Q Don't you see Boyer in that picture?

A Boyer's arm is not, does not appear from this picture.

JUDGE RADER: Is he not in the picture, in the group?

THE WITNESS: I see, yes, I see what appears to be his head, his hair.

JUDGE RADER: How about Schaefer, do you see him there?

THE WITNESS: Yes.

Q Now, while you were in the circle --

JUDGE RADER: That accounts for four. I see five people there.

THE WITNESS: The gentleman, I don't know why he is marked G. I don't know what G stands for.

JUDGE RADER: Who else was there. Disregard the initials. Tell us who they were?

THE WITNESS: Stephen Koslof.

JUDGE RADER: Do you see at the corner, G?

THE WITNESS: No.

Q Did you see Gordon at all when you got off the truck?

A You mean immediately after he got off the truck?

Q Yes?

A No.

Q When did you see him?

A After that. I know I saw him in the station house, but I cannot definitely state that I saw him.

Q Did you see him in the area around the truck immediately preceding your arrest?

A No.

Q While you and the other defendants' arms were clasped, were you saying anything?

A Yes.

Q What were you saying?

A "We shall overcome."

Q "We shall overcome"?

A Yes.

Q And in what tone of voice were you singing?

A It was slightly above moderate.

Q You mean --

A We were not, it was a loud tone of voice.

Q Loud, militant tone of voice, wasn't it? It was a battle cry, wasn't it?

MR. SCHIFFER: Objection, your Honor.

JUDGE RADER: Overruled.

A It was not a battle cry.

JUDGE RADER: It's a slogan.

THE WITNESS: Slogan. It's a song.

JUDGE RADER: But that portion was used as a slogan?

THE WITNESS: No, we were singing a song.

Q Did you say singing?

A Yes.

Q Did you say anything else?

A No.

Q Where were you standing at this point? Where in the roadway, as distinguished from City Hall Plaza?

JUDGE RADER: I believe the Plaza is to the right there.

THE WITNESS: Yes. This would be in the roadway because -- yes.

JUDGE RADER: You have answered the question.

Q Were there any automobiles behind you?

A Yes.

Q How many would you say? A long line?

A At that point there was the unmarked silver gray Patrol Car.

JUDGE RADER: Were there any other cars, that's the question. A long line of cars?

THE WITNESS: You mean in the street

behind?

JUDGE RADER: The words he used were, was there a long line of cars behind you.

THE WITNESS: I don't know.

Q Were there cars to the right or to the left?

A There were cars to the left.

Q Many cars?

A I didn't notice.

Q Did you notice whether there was traffic backed up behind you, or north on Park Row?

A I did not notice.

Q How many people would you estimate were in the area immediately around you where you and the other defendants were singing and chanting?

JUDGE RADER: Including officers?

Q Exclusive of officers.

A In that area?

Q Not the area in which you were standing, but the area immediately around that.

JUDGE RADER: Say, within a circle of twenty feet all around.

THE WITNESS: Other than police officers, ten, twelve people.

Q There were pickets down there that day in City Hall?

A Yes.

Q CORE pickets?

A Most people with the pickets were tenants from Eldridge Street.

Q Was your demonstration to be in conjunction with these pickets, tenants from Eldridge Street?

A Yes.

Q While you -- incidentally, you sang what?

A "We shall overcome."

Q I'm sorry, "We shall overcome." Did the other defendants who had the arms clasped, were they also chanting that song?

A I believe some of them did, yes.

Q Would you say all of them did?

A No.

Q Who didn't say a word?

A Mr. Vasquez.

Q He just stood there in the circle and didn't say a word?

A Yes.

Q Did he hum?

A I don't believe so.

Q Did he make any noise at all?

A No, I don't believe so.

Q Does he speak English, if you know?

A No.

JUDGE RADER: Excuse me a moment. You knew where you were, you knew you were at City Hall Plaza, is that right?

THE WITNESS: That's right.

JUDGE RADER: You knew the Municipal Building was on one side, and City Hall was in the Plaza?

THE WITNESS: Yes.

JUDGE RADER: You knew the Mayor's office was there, is that correct?

THE WITNESS: Yes, that's right.

JUDGE RADER: Did you know before you started out, that you were going to demonstrate on City Hall in front of the Mayor's office, as close as you could get?

THE WITNESS: Yes, sir.

JUDGE RADER: And you say that your loading of this truck was planned in conjunction with that demonstration?

THE WITNESS: That's correct.

JUDGE RADER: All right.

THE WITNESS: Could I clarify that?

JUDGE RADER: You have answered.

Q Mr. Freedman, while you were in this circle with the other defendants, what did these pickets do? Did they lend you any support vocally or otherwise?

A I was in the area -- at this point I don't know what the pickets were doing. I was with my back to the pickets and facing the police officers.

Q Well, you heard the chanting of the same song you were chanting, didn't you?

A The pickets?

Q Yes.

A They were singing, I believe.

JUDGE RADER: Were they singing the same song?

THE WITNESS: I don't know.

Q Do you know what they were singing?

A No.

Q Where were they in relation to you at the point at which you were singing?

A You mean in this photograph?

Q No. I mean --

JUDGE RADER: In distance?

Q Yes.

A About thirty feet. Thirty, forty feet, I would say.

Q Were they west of you?

A They were west.

Q You knew this to be a busy area, did you not, the area around City Hall Park?

A Moderately busy.

Q Did you hear Captain Licht make two admonitions, or statements, after your arms were joined together and you were chanting? The first time, that you would be placed under arrest if you didn't stop and move on?

A I heard him say somthing to the effect. I heard him make some admonitions, yes.

Q And you ignored it, did you not?

A Well, I couldn't tell exactly what he was saying, and I also felt that I had been placed under arrest prevously.

Q This date?

A This day, yes. When the officers took me off bodily, they took me off, propelled me off the truck, and they said, "Come with us." And, as I testified before, I felt that this was an arrest. This was an arrest proceeding.

Q You felt it was an arrest. Nobody told you it was an arrest?

A Some police officer was dragging me off. This is what I felt.

Q Did any of those police officers say, "Mr. Freedman, you are under arrest"?

A No.

Q Now, Captain Licht, did you see him in the courtroom or in the corridors around here? In other words, do you know Captain Licht if you see him?

A I don't know.

Q At any rate, the officer who told you to stop chanting and move on or you would be arrested was in full police uniform at the time, the blue uniform?

A Yes.

Q With gold shield?

A Yes.

Q Did he have a gold band around his hat, do you recall, the man who told you to move on?

A Yes, yes, I believe so.

MR. SCHIFFER: The witness did not testify he was told to keep moving on, or move on by this officer, nor did he testify that he was told to stop chanting by this officer.

MR. McGINLEY: Your Honor, I think we all know what the testimony has been.

JUDGE RADER: I have notes on that. I overrule the objection. Will you tell me, did I understand you to say that you were propelled off the truck?

THE WITNESS: That's right.

JUDGE RADER: And how about the others? Were they -- did you say how they came off the truck, or were you too busy with your own troubles to know this?

THE WITNESS: We were assembled together in this area of the truck, the lefthand rear. I saw the other people being held by police officers in one way or another.

JUDGE RADER: How were they able to release themselves from the police officers, including yourself, and form this ring with their arms around each other?

THE WITNESS: For a few moments, the police officers, as testified before, released me.

JUDGE RADER: How about the others? You say they were in custody. How did they get away to form this ring?

THE WITNESS: I think the photograph clearly shows that they couldn't have gotten away. The police officer has one hand on Vasquez --

JUDGE RADER: Well, I don't think he is being restrained, particularly in People's 3. In other words, you weren't restrained sufficiently enough to prevent the formation of this circle and these positions indicated by People's Exhibit 3.

THE WITNESS: No.

JUDGE RADER: All right. Shall we take a short recess and then work for about another hour.

(Recess.)

JUDGE RADER: You are still under oath.

MR. McGINLEY: I have no further questions of this witness, your Honor.

JUDGE RADER: Any redirect?

MR. SCHIFFER: Yes, your Honor.

JUDGE RADER: Now, before we go on redirect, of course, Mr. Kaplan has the right to cross-examine.

MR. KAPLAN: Yes, I have no cross-examination.

JUDGE RADER: No cross.

REDIRECT EXAMINATION

BY MR. SCHIFFER:

Q Mr. Freedman, you testified that when you and certain other persons were in a group as shown in People's Exhibit 3, the silver gray police car was behind you. Was that car parked?

MR. McGINLEY: Your Honor, I object to

the line of questioning. The testimony was brought out on direct examination and cross-examination concerning this police car and other traffic in the area. I don't think there is anything new to be brought out on cross-examination with relation to the car, that is necessary on redirect examination, and therefore, I submit that is improper.

JUDGE RADER: Overruled.

A Yes, it was parked.

Q Now, was it situated in the roadway behind the diagonal white lines?

A Yes.

MR. McGINLEY: Counselor is leading.

JUDGE RADER: Sustained. Do not lead.

MR. SCHIFFER: Sorry.

JUDGE RADER: Do you have another pad? Proceed.

Q What was the position of the silver gray car in relation to the white lines?

A The silver gray car was outside of the white lines,parked in the roadway.

JUDGE RADER: May I see People's Exhibit 3.

When you refer to the silver gray car, is that the one?

THE WITNESS: Yes, your Honor.

JUDGE RADER: Well, I think the picture shows its position. Its position is somewhat directly behind the truck. That's the way I would look at it.

MR. SCHIFFER: Yes, your Honor, and projected into the roadway.

JUDGE RADER: All right.

Q Now, you testified that Captain Licht said -- Captain Licht made a statement. Would you to the best of your recollection say what that statement was?

JUDGE RADER: Now, before you proceed, I do believe that he said it was, there was too much noise. He couldn't hear the statement. Didn't you say that previously?

THE WITNESS: I said that I heard what I believe to be his first command. Now, I do not know that that was Captain Licht. I do not know his name.

Q All right. Did you hear an officer with gold insignia say anything?

MR. KAPLAN: Excuse me, your Honor.

JUDGE RADER: Yes?

MR. SCHIFFER: Withdrawn.

MR. McGINLEY: Your Honor -- all right, I withdraw my objection.

Mr. Freedman - For the Defendant - Redirect

Q Now, Mr. Freedman, you testified that the demonstrators who were at City Hall at the time the truck arrived, were there, you used in conjunction with your bringing the truck to the Municipal Building. Would you explain, please, what you meant by the term "in conjunction with"?

A Upon arrival of the truck at the Municipal Building, the picket captains were instructed to move the line from the City Hall area to the Municipal Building. This was the understanding with the picket captain and with the people on the line.

Q You say the picket captains were instructed. Who gave the instructions?

A I did.

Q Who were the picket captains?

A George Marquadel and Arthur Minzer, and they were to move the lines as soon as the truck got to the Municipal Building.

Q What were their instructions?

JUDGE RADER: Did you say that you gave those instructions?

THE WITNESS: That is correct.

JUDGE RADER: Am I to take it then that you directed the demonstration that was going on as well as the truck activities?

THE WITNESS: I had spoken with the picket captains who were in charge of the demonstration at City Hall.

JUDGE RADER: You just said, if I am mistaken, tell me about it. I believe I heard you say that you instructed the picket captains who were in charge of the demonstration, and you mentioned two?

THE WITNESS: That's right.

JUDGE RADER: Well, if you gave them instructions?

THE WITNESS: Yes.

JUDGE RADER: And you planned their activities; is that correct?

THE WITNESS: As far as the picket line is concerned, it was up to their discretion as to maintain peace and order on the picket line.

JUDGE RADER: Well, I am not referring to that. But you gave them instructions as to the sequence of events to take place when you arrived --

THE WITNESS: At Municipal --

JUDGE RADER: At the Municipal Building with the truck?

THE WITNESS: That's right.

JUDGE RADER: And their conduct and

activities as you arrived was to be pursuant to directions that you gave them?

THE WITNESS: Yes.

JUDGE RADER: All right.

Q But you did not anticipate that, you had not given those instructions to them with respect to, excuse me, had you given any instructions to them concerning the possibility of your arrival at City Hall Plaza?

A No, because we --

JUDGE RADER: Your answer is noted.

A No.

Q Had you told them, that is to say the picket captains, to expect your arrival at City Hall Plaza?

MR. McGINLEY: Objection, your Honor.

JUDGE RADER: Sustained.

Q On August 21, was there any construction, road construction adjacent to the Municipal Building, or any part of the Municipal Building?

MR. McGINLEY: Objection, your Honor. I think this is irrelevant to begin with and secondly new matter not brought out on cross-examination.

JUDGE RADER: Sustained.

MR. SCHIFFER: Your Honor, it bears on the exact location of the truck. At that point which was something brought out on cross-examination.

JUDGE RADER: At what point?

MR. SCHIFFER: At the point directly opposite the Municipal Building. There was considerable testimony concerning --

JUDGE RADER: As to route of the truck as it passed the south point of the Municipal Building, north point and then the south point. You are correct about that. Court has withdrawn its ruling and overrules the objection.

MR. SCHIFFER: Thank you, your Honor.

Q Was there construction road construction adjacent to any portion of the Municipal Building on August 21?

A Yes. The archway being the divider at the northern end of the Municipal Building, directly adjacent to Lafayette Street, had a few horses.

Q Barricades?

A Yes. And there was construction in that area.

Q How wide a portion of the roadway was blocked?

MR. McGINLEY: Objection, your Honor, the counsel is leading.

JUDGE RADER: It is leading to a degree where there is nothing damaging or suggestive may take place.

A I would say about 15 feet. Ten I would say at this point.

MR. SCHIFFER: I have no further questions.

MR. McGINLEY: If your Honor please, I have one or two more questions. This is not a matter just brought out on redirect but it has to do with the command given by Captain Licht. Your Honor has stated his recollection of the facts, and mine are different from his. I respectfully ask to be allowed one or two questions.

JUDGE RADER: Go ahead.

RECROSS EXAMINATION:

BY MR. McGINLEY:

Q This Police Officer that gave a command at the point at which your arms were clasped with other defendants and chanting, we referred to him as Captain Licht. You testified you don't know that name but there was a Police Officer, with a gold band around his hat?

A Yes.

Q Now, he said something to you while you were so chanting and so in between with your fellow defendants; what was it he said?

A I heard him say, "Move on or you are going to be arrested."

Q How many times did you hear him say that?

A I heard him give it the first time and second time and it was muffled, there were Police Officers surrounding us and the car was directly in back of us and due to --

Q You only heard it once is your answer to the question?

A Yes.

MR. McGINLEY: Thank you, your Honor.

JUDGE RADER: You said, he said, "move on, or you are going to be arrested."

THE WITNESS: Yes.

JUDGE RADER: Well, at that time he did not have you under arrest?

THE WITNESS: I do not believe so.

JUDGE RADER: He did not have you in custody at that time, did he?

THE WITNESS: Well, I felt that I was in custody after having been assisted off the truck by the Police Officers and brought into that area, and the fact that I was surrounded by so many of them.

JUDGE RADER: But you recall he said, "move on or you will be arrested", is that correct?

THE WITNESS: Yes, that's right.

JUDGE RADER: All right.

RE-REDIRECT EXAMINATION:

BY MR. SCHIFFER:

Q But did you think you had the opportunity to move on?

MR. McGINLEY: Objection.

JUDGE RADER: Sustained. We are all finished with this witness now?

MR. KAPLAN: With the Court's indulgence, just a moment now.

Q There was a substantial number of Policemen surrounding you; is that correct?

A Yes, that's correct.

Q Did you have the opportunity to depart without pushing into a Policeman?

MR. McGINLEY: Objection, your Honor, as to what opportunity this defendant had.

JUDGE RADER: I will sustain it. You might ask was he surrounded by Policemen.

Q Yes. Were you surrounded by Policemen?

A I was surrounded by Policemen.

Q Mr. Freedman, with reference to this exhibit, if you had walked to your right, what would you have struck?

MR. McGINLEY: Objection.

JUDGE RADER: Sustained.

A I would --

JUDGE RADER: Don't answer the question.

Q Was there a Policeman to your right?

A Yes, there was.

Q Was there a Policeman in front of you?

A There was.

Q Was there a Policeman to your left?

JUDGE RADER: Now, if you are relating to the time when the picture was taken, doesn't this picture depict the situation better than he can, and the Chinese say one picture is worth more than a thousand words.

MR. SCHIFFER: May I rephrase it then?

JUDGE RADER: All right.

Q At the time that you heard this Officer make some statement concerning your moving on, were you surrounded by Policemen?

MR. McGINLEY: I object to that as calling for a conclusion, and it has several connotations.

JUDGE RADER: I will take it. I think I understand the connotations in which it is used.

A Yes, I was surrounded by many Policemen.

MR. SCHIFFER: I have no further questions.

MR. McGINLEY: Nothing further, your Honor.

JUDGE RADER: You are excused, sir.

COURT OFFICER: Step down.

JUDGE RADER: Next witness.

MR. KAPLAN: Will you call Mrs. Church. This is a character witness.

JUDGE RADER: On behalf of whom?

MR. KAPLAN: On behalf of Defendant Freedman.

JUDGE RADER: You don't represent Mr. Freedman.

MR. KAPLAN: Your Honor, would your records indicate a substitution merely for the purpose of these last --

JUDGE RADER: You have an objection?

MR. McGINLEY: I have no objection.

JUDGE RADER: You wish to defer to Mr. Kaplan?

MR. SCHIFFER: I wish to defer to Mr. Kaplan.

FRANCESCA CHURCH, 425 Broadway, Hastings-on-Hudson, New York, called as a witness, being duly sworn, testified as follows:

COURT OFFICER: Your occupation?

THE WITNESS: Music teacher.

DIRECT EXAMINATION:

BY MR. KAPLAN:

Q Mrs. Church, will you tell the Court where you teach music?

A Hastings-on-Hudson, in my home.

Q How long have you been a teacher?

A Twenty years.

Q Do you know defendant Joel Freedman?

A Yes, I do.

Q How long have you known him?

A Eleven years.

Q Do you live in the immediate area where he resides?

A Yes, I do.

Q Do you know what he does, his occupation?

A Yes.

Q What is that?

A Student.

Q Now, have you ever had occasions to speak to persons concerning the reputation of Mr. Freedman?

A Yes.

Q Did you have occasions to speak to persons concerning the reputation Mr. Freedman has as to veracity, morals, and general honesty?

A Yes.

Q And would you tell the Court what was that reputation?

A Excellent.

MR. KAPLAN: No further questions.

CROSS EXAMINATION:

BY MR. McGINLEY:

Q Mrs. Church, these people you spoke to concerning Mr. Freedman, did they also know Mr. Freedman?

A Pardon.

Q Did these people also know him?

A Yes.

Q Have you spoken with any of the people since you heard about this case?

A No.

Q When was the last time you spoke to anybody regarding Mr. Freedman's reputation?

A I wouldn't know.

Q You have no idea?

A I couldn't say.

JUDGE RADER: Could you give us an estimate?

THE WITNESS: Approximately all the time I have known him. Eleven years.

JUDGE RADER: How long ago was the last time you spoke to people with respect to Mr.

Freedman's reputation?

THE WITNESS: While he was still at high school.

JUDGE RADER: How long ago?

THE WITNESS: Which must have been two or three years ago.

Q With whom did you discuss his reputation at that time?

A Other teachers.

Q Whi did you find it necessary to discuss his reputation for peacefulness?

A Well, it wasn't necessary. It was in discussing a student.

Q But you discussed his reputation for peacefulness which counsel asked you?

A Well,teachers do --

MR. KAPLAN: Your Honor, did I say peacefulness? I said honesty, veracity, but never peacefulness.

JUDGE RADER: We will eliminate it and correct it by bringing it in accordance with the intent of counsel.

MR. KAPLAN: As I had it.

JUDGE RADER: If you want it to say, or don't you want it to stand?

MR. KAPLAN: I will stick to the adjectives I used.

MR. McGINLEY: I'm sorry. May I use peacefulness?

JUDGE RADER: He'd like to, but he will let stand as it is.

Q Have you ever heard anything bad about Mr. Freedman?

A No. I never have.

Q Who were the people you say you spoke to, teachers?

A Teachers, neighbors.

Q Neighbors of Mr. Freedman and teachers also?

A Yes.

MR. McGINLEY: I have no further questions.

COURT OFFICER: Step down.

MR. KAPLAN: Your Honor, again in the interest of time and since your Honor, of course, is the trier of the facts, I have two other character witnesses, reputation witnesses. If the District Attorney would stpulate, if I called these two witnesses and if asked similar questions, their answers would be similar.

JUDGE RADER: Well, the testimony would be very, very brief. I don't think you can offend a witness more than to call him to Court and fail to give him the opportunity, for which he spent all this time here.

MR. KAPLAN: Very well.

JOSEPH CILECEK, 110 High Street, Hastings-on-Hudson, New York, called as a witness, being duly sworn, testified as follows:

COURT OFFICER: Business or occupation?

THE WITNESS: Teacher.

DIRECT EXAMINATION:

BY MR. KAPLAN:

Q Mr. Cilecek, would you tell the Court you are a teacher at what school?

A At Hastings-on-Hudson High School.

Q High school What do you teach?

A I teach music now. Instrumental musb.

Q How long have you taught music?

A Let's see, about 16 years ago.

Q Now, at one time was Mr. Freedman a student of yours?

A Yes, as a matter of fact.

Q Now, do you live in the immediate area that Mr. Freedman lives?

A Yes. In Hastings.

Q How long have you known him?

A For the past seven years.

Q Do you know other persons who know Mr. Freedman?

A Well, staff faculty, of course. They have known him, people would get to know Joel.

Q Have you ever had occasion to speak to these persons concerning the reputation of Mr. Freedman?

A Yes. Well, and naturally I discussed him at one time or another, and in that category I guess.

Q Now, in these discussions were there other persons who knew Mr. Freedman, did you ever discuss his reputation for high morality, honesty, veracity, truthfulness?

A I don't think there is any question.

JUDGE RADER: Just answer the question.

A Yes.

Q Did you discuss it?

A Yes.

Q Would you tell the Court what was his reputation?

A Excellent.

MR. KAPLAN: No further questions.

CROSS EXAMINATION:

BY MR. McGINLEY:

Q Mr. Freedman was a studentof yours, about how long?

A Well, two and-a-half years, or so.

Q And am I correct that then, that assuming it was at least two and-a-half years that you last discussed Mr. Freedman with fellow teachers?

A No, I wouldn't say. As a matter of fact, in the course of last year, there was several times I discussed him with teachers.

Q What occasion did you have to discuss him last year?

A I don't recall the specific occasions, but there are times when you talk to various teachers, and other teachers and you discussed.

Q But don't you usually discuss academic ability, something like that?

A But you always discuss the nature of the student, it is just as important as the academic standings.

Q You mean, every time you had a discussion with fellow teachers, about Freedman, that you discussed his reputation for morality and honesty?

MR. KAPLAN: I object.

JUDGE RADER: Overruled.

A Not every time. No, but I mean, I know what the general feeling of the faculty is in this relationship about a student.

Q That's what you are telling us, the general feeling of the faculty for the defendant Freedman?

A Yes, I would say so, as I see it.

Q So you can't be too specific about the last time you discussed his reputation with any or all members of the faculty?

A I couldn't be specific about a particular instance at this moment, no.

Q Can we just approximate it then. Would it be a year ago?

A Say it was less than a year. It was during the last school year.

Q That ended in June?

A Yes. Well, that's not quite a year.

Q It's only a few months?

MR. KAPLAN: I object. It is becoming argumentative.

JUDGE RADER: Overruled.

Q Was it June that you discussed him?

A I couldn't say specifically. No, I don't remember the exact dates.

MR. McGINLEY: I have no further questions.

JUDGE RADER: May I ask a question. This young man hasn't been going to school for a period of two and-a-half years?

THE WITNESS: Yes.

JUDGE RADER: What was the occasion after he had been out of school two and-a-half years or thereabouts, what caused this discussion?

THE WITNESS: Well, I relate it to one instance. I remember I saw Joel. I had seen him on occasion now and then. I remember speaking to him about how he was doing at school, and he related to me how well, he was doing and in this regard I remember speaking to some of the teachers, other teachers about Joel, and how I related to them what he was doing in the way of a student at college. Of course, naturally you don't stop there. So very often, you go a little further.

JUDGE RADER: Well, have you discussed his academic progress, do you mean to say you go on to discuss also his morality, his veracity and other things?

THE WITNESS: Well, in a sense yes.

JUDGE RADER: Well, did you or did you not?

THE WITNESS: Yes, I did.

JUDGE RADER: What was the occasions for going into those topics?

THE WITNESS: Well, I would say there

wasn't a particular occasion. It is just a general feeling teachers have about a student, and you very often express, "fine lad, he got along very well at school," and this type --

JUDGE RADER: Well, this type of thing you related, did it include veracity or morals?

THE WITNESS: I don't think there was any question about it.

JUDGE RADER: We are talking about this specific instance, where you saw fellow teachers, you merely discussed the fact that he was a very nice boy and very good student?

THE WITNESS: Wouldn't that be implying some of these --

JUDGE RADER: We are not talking about implications. We are talking whether or not you discussed veracity and morals at that time, not by implication, but whether you did specifically discuss it. Now, did you specifically discuss this subject?

THE WITNESS: Well, if you put it that way, I would have to say no.

JUDGE RADER: Anything else?

MR. KAPLAN: Just one question.

REDIRECT EXAMINATION:

BY MR. KAPLAN:

Q During these discussions, when the adjective "fine" was applied, as you say, did you understand "fine" to mean morally acceptable, of high ethical honesty?

MR. McGINLEY: Objected to.

JUDGE RADER: Sustained.

COURT OFFICER: Step down.

MR. KAPLAN: I have no further character witnesses, your Honor.

JUDGE RADER: Next witness.

MR. KAPLAN: Your Honor, I suggest respectfully it is 4:15. I am certain this case will terminate tomorrow.

JUDGE RADER: That particularly bothers me. I am sort of obliged to go to another assignment, as soon as I can get there.

MR. KAPLAN: We do not intend to call all the defendants.

JUDGE RADER: Well, I understood we were going to have all the defendants and have character witnesses for each defendant.

MR. KAPLAN: Since that time, there's been a reappraisal. There will be considerably less than anticipated. As I say, I am certain it will be finished tomorrow.

JUDGE RADER: I hope I could be that certain. Very frankly, I am considering whether it would be wise to go on until 6 o'clock. However, you assure me that this case should be completed by tomorrow.

MR. KAPLAN: Yes. I assure the Court.

JUDGE RADER: You feel the same way?

MR. SCHIFFER: Yes, your Honor.

JUDGE RADER: Well, you know at this time according to the further schedule, how many witnesses you are going to have.

MR. SCHIFFER: Well, there will be Mr. Gordon as the next witness and I assume, I am not certain, one or two character witnesses and possibly this will be followed by Mr. Cannon; couple of witnesses on his behalf. From that point on, we don't intend going further.

JUDGE RADER: Are you going to have any rebuttal witnesses?

MR. McGINLEY: Not on this point, your Honor, no.

MR. SCHIFFER: We also have one or two other witnesses, your Honor, but they will be short.

JUDGE RADER: And you contemplate three more witnesses. You are going to have Mr. Cannon, Mr. Gordon and two character witnesses; that's four and you say about two more witnesses.

MR. KAPLAN: One or two.

JUDGE RADER: It looks like six more witnesses.

MR. KAPLAN: We are certain to finish tomorrow.

JUDGE RADER: Let me suggest this. We will recess now until tomorrow morning 9:30 but I must ask all of the people involved, especially the defendants and District Attorney, all to be here promptly 9:30 so we can get started 9:30, and be as economical of time as we can possibly be.

MR. KAPLAN: Thank you, your Honor.

The above is certified to be a true and correct transcript of the testimony.

Official Court Reporter CSR

THE CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1C-1 : COUNTY OF NEW YORK

- x

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ELEUTERIO GONZALEZ, JEFFREY KALB,
JOEL FREEDMAN;

GEORGE CANNON, ELEUTERIO GONZALEZ,
JEFFREY KALB, JOEL FREEDMAN;

JON SCHAEFER, ANTONIO VASQUEZ,
STEPHEN GORDON, ALEXANDER BOYER,

Defendants.

- x

Charges:

Section 722, Subdivision 2 and 4 of the Penal Law.
Section 1220 of the Vehicle and Traffic Law.

Section 722, Subdivision 2 and 3 of the Penal Law.

Dockets:
C14235 thru C14237
B6296 thru B6299
C14230 thru C14233

100 Centre Street
New York 13, N.Y.
September 5, 1963

Before:

HONORABLE GEORGE S. RADER,
Criminal Court Judge.

Appearances:

For the People
PATRICK W. McGINLEY, ESQ.
Assistant District Attorney.

For Defendants Gonzalez,
Kalb, Freedman and Cannon
GEORGE SCHIFFER, ESQ.
40 East 49th Street
New York, New York

For Defendants Schaefer,
Vasquez, Gordon and Boyer
KENNETH KAPLAN, ESQ.
37 Wall Street
New York, New York

Max Diamond,
Court Officer.

Theodore Martin,
Court Reporter.

THE COURT: Is there anything counsel on either side wish to say to the Court before the decision is announced?

MR. SCHIFFER: No, your Honor.

THE COURT: The motion of respective counsel in behalf of all of the defendants is denied as to each defendant, and accordingly defendant George Cannon, defendant Eleuterio Gonzalez, defendant Jeffrey Kalb and defendant Joel Freedman are found guilty of violation of the Vehicular and Traffic Law, Section 1220. The defendants Jon Schaefer, Antonio Vasquez, Stephen Gordon and Alexander Boyer are each found guilty of violation of Section 722 Subdivisions 2 and 3. And defendants Eleuterio Gonzalez -- let the record show that the defendant Gonzalez is also known as Eleuterio Rodriguez Gonzalez -- Jeffrey Kalb and Joel Freedman are each found guilty of violation of Section 722 Subdivisions 2 and 4 of the Penal Law. Now, in this case, with respect to all of the defendants, the taking of fingerprints will be waived. Are the defendants ready for sentence at this time?

MR. KAPLAN: Your Honor, on behalf of the defendants Schaefer, Gordon, Boyer and Vasquez, they are ready for sentence.

MR. SCHIFFER: The same on behalf of the rest of the defendants.

THE COURT: I think you should make your usual motion and take an exception.

MR. KAPLAN: Yes. Respectfully except, your Honor.

MR. SCHIFFER: Yes.

THE COURT: Put it on the record so as to protect yourselves.

MR. KAPLAN: May it please the Court, defendants Schaefer, Vasquez, Gordon and Boyer except to the findings of guilty as to them and respectfully move the Court to set aside the verdict on the ground that it was against the weight of the credible evidence.

THE COURT: Contrary to law in fact.

MR. KAPLAN: Yes, your Honor.

THE COURT: You likewise so move?

MR. SCHIFFER: I likewise so move on behalf of the remaining defendants on all charges.

THE COURT: Now, is there any legal cause why the defendants should not be sentenced at this time?

MR. KAPLAN: Your Honor, other than the motion made plus respectful application for an arrest of judgment on all the grounds set forth in the Code of Criminal Procedure and the Penal Law, no further legal cause.

MR. SCHIFFER: Your Honor, may we approach the bench for a moment?

THE COURT: Do you likewise so move?

MR. SCHIFFER: Yes, your Honor, I likewise so move.

THE COURT: All parties, all counsel may approach the bench.

(At this point there was a discussion at the bench between the Assistant District Attorney, Mr. Kaplan, Mr. Schiffer and the Court.)

THE COURT: Now, again I ask: Is there any legal cause why the defendants should not be sentenced at this time?

MR. KAPLAN: No, your Honor.

MR. SCHIFFER: No, your Honor.

THE COURT: Mr. Schiffer?

MR. SCHIFFER: No, your Honor.

THE COURT: Mr. Kaplan?

MR. KAPLAN: No, your Honor.

THE COURT: Mr. District Attorney?

MR. McGINLEY: No reason, your Honor.

THE COURT: Is there anything you wish to say, Mr. Kaplan, on behalf of your defendants?

MR. KAPLAN: Yes, if it please the Court. Your Honor, on behalf of the defendants which I represented, may I say that each and every one of them has of course found himself in this trouble based on their actions which in turn was based upon the loftiness and most benevolent of motives and efforts and intents. They have all devoted great time and energy and effort in working with the Department of Housing, as we have noted before. They have tried their best to clean up the situation on Eldridge Street as citizens. And in their attempt to do so, they of course find themselves in this difficulty. I say to your Honor that of the four defendants I represent,two of them are college students, Schaefer and Boyer. I needn't remind the Court the great impact a finding, conviction has upon their record and their future. They are all youngsters, in their early twenties at most. I ask your Honor to consider all this when your Honor sees fit to sentence. As for Boyer, may I say this, your Honor: He attends NYU. He is in the sophomore year. He is a major in American history. He was born in New York City, attended the City's grade schools and high schools, lived with his parents constantly and, of course, he is still there. He was never convicted of a crime, and I understand he is an outstanding student with a high "B" average. On behalf of the defendant Gordon, your Honor: Mr. Gordon lives in Knolls Crescent, New York. He was born in 1941. Prior to living there, he has lived in the Heights section of Manhattan for 11 years. He is an NYU student, as your Honor knows from his testimony, and he is a senior about to graduate next year. He attends the School of Education. He wishes to be a science teacher. Again I repeat, your Honor, the mere finding of guilt and the ensuing record, even though it merely be an offense, would have I think a horrifying affect on his future, your Honor. He has also worked as a swimming instructor for the past seven years, and he is, I understand, a first-class lathe draftsman and lathesman. He belongs to a number of professional societies in the school, your Honor; among them are the Geology Club and the Science Mathematics Club, which is a professional club for mathematics and science teachers. He as is Mr. Boyer an excellent student. As for Mr. Vasquez, your Honor, Mr. Vasquez is an immigrant from the Commonwealth of Puerto Rico. He lives at 215 Eldridge Street. He has been there for three years. He is married and he has five children. They range from ages eight to three. He is presently unemployed, but he has worked as a restaurant worker and whatever, and I understand he has been going to school full time. Unfortunately, he sort of found himself in this. He is not, I understand, a member of the organization. He is a tenant in one of the buildings. And due to the horrifying conditions in those buildings, as was displayed during the trial, he agreed to try to help matters by acting in his capacity, that is the capacity he found himself in subsequent to this. Now, Mr. Schaefer, your Honor, is 26 years old. He was born in Seattle, Washington. He attended the local high school there and one in British Colombia. He attended college for two years, and he left to go to work. He has had three and a half years of honorable service in the Far East with the United States Army. He was discharged in 1961. His present occupation, your Honor, is a field worker for the organization known as CORE. He gets a bare minimum subsistence, I understand, of $35. As your Honor well knows, of course, we are dealing with defendants who are hardly misdemeanants or even offenders in the regular sense of the word. They have all, as I said, did this with a complete feeling of unselfishness. They gained personally absolutely nothing, as is obvious. They gave of themselves their effort, their time and probably their future in order to accomplish what they thought to be the right thing. Evidently, to an extent the motive and the intent was right because my understanding is that Mr. Gribetz told them that he would like to work with them on these things. Now, of course, I am sure Mr. Gribetz didn't say to go as far as the trial indicated they went. I merely say all this, your Honor, in asking the Court to be most merciful in its sentence; saying that the damage is done and that any jail time certainly wouldn't add to it, wouldn't do anything except take them out of society and be an undue punishment. I ask the Court to in its wisdom exercise the greatest amount of mercy here.

THE COURT: Do you wish to say anything, Mr. Schiffer, on behalf of your defendants?

MR. SCHIFFER: Your Honor, I join in Mr. Kaplan's general remarks. As to the individual defendants: Mr. Cannon is a professional truck driver, your Honor. He is 47 years old. He is married. He is a veteran of some seven years service in the United States Army and during World War II of course was a portion of that service. He was wounded twice. In addition to two Purple Hearts, he has a Bronze Star for service in Europe.

He has a 20 per cent disability. Having no prior convictions and having no record, I think that Mr. Cannon who participated here as indicated before on the representation that there would be no unlawful conduct, merely to drive the truck. This was his understanding of the matter. Certainly, your Honor, I hope your Honor will see fit to suspend any sentence your Honor may see fit to impose. In addition, your Honor, I must beg to point out that of all of the defendants, Mr. Cannon has had a severe financial loss in that he makes a living driving a truck. He has no other source of any income. The defendant Freedman, your Honor, is a student at NYU. His family has lived in Hastings on the Hudson for many years. Mr. Freedman's parents are in the Courtroom.

MR. SCHIFFER: Would you stand up in the aisle, please. Mr. Freedman's father works for Colombia Pictures Corporation. Mr. Freedman is a young man who is obviously dedicated; obviously acting from the highest possible motives without hope of any gain to himself in these matters. Mr. Freedman is also a musician, your Honor, and plays with bands and on recording sessions periodically to make some money to live on and see himself through school. Mr. Freedman has expended a numerous amount of time since virtually the beginning of this year in an effort to ameliorate living conditions in an area where he himself certainly does not live. With most painstaking care he investigated; he secured the assistance of others to investigate, to file complaints with several City departments, to follow up on those complaints and to do all of the things which he could do to ameliorate and assist in ameliorating the situation there. Mr. Kalb graduated from Jamaica High School. He is a student at NYU and an English major. He was employed as a student assistant at NYU for two years. He has been working extensively in this effort to ameliorate living conditions in the Eldridge Street area. He similarly is an object of your Honor's mercy in this matter, and similarly all of the other statements that are applicable to any of the defendants are applicable to him. Mr. Gonzalez Rodriguez is a member of the Toy and

Novelty Workers of America, Local 223 CIO.

THE INTERPRETER: Would you please speak a little louder, Mr. Attorney.

MR. SCHIFFER: I'm sorry. Mr. Gonzales Rodriguez is a member of the Toy and Novelty Workers of America, Local 223, and has been steadily employed except during certain layoffs. Earlier this year, your Honor, between approximately February and May, he returned to Puerto Ricc where his mother was seriously ill. He has received a work assignment so that as soon as he can depart from this case he will be returning to employment. Mr. Gonzalez Rodriguez lives with his cousin. There was some confusion on the record at the arraignment as to just who he was living with. It is a male cousin with whom he shares an apartment on Eldridge Street. He has had no previous record of convictions and appears to be a hard working, self sufficient gentleman. His participation here, I must be frank, I cannot conceive based upon my own conversations with him that he understood that anybody was intending to violate any law, and his participation was because he lived in these conditions and saw all of the other people working hard to try to get things improved and he thought that this was some way in which he can help to secure that improvement. Again, your Honor, I think that in all of the circumstances the interest of justice would best be served by not imposing any jail sentence in this matter.

THE COURT: Do the People wish to be heard?

MR. McGINLEY: Yes, please, your Honor. The People respectfully suggest to the Court that the appropriate sentence in this case would be jail for each and all of the defendants. The People have no quarrel with the aims or ends of these defendants. They were not charged with those nor were they convicted for them. Merely with their means and methods do we quarrel. Now, these are such methods which are frowned upon by those who are in authority in all civil rights movements in the Country as illustrated by statements from the Reverend Martin Luther King at Washington D.C. on the 28th of August, just a few days ago: Quote: "In the process of gaining our rightful place, we must not be guilty of wrongful deeds." Unquote. Jack Greenberg, the director of Legal Defense in Educational Fund, of the NAACP in the New York Times of August 18, 1963, in a question and answer session, spoke to the effect that sit-ins, pickets and marchers must obey the law like everyone else. Now, such methods as used by these defendants are completely unnecessary as illustrated by the march on Washington last August 28, where grievances were brought to the attention of authority, in fact to the seat of the Government of the United States, in a calm and orderly manner. There was no need to dump garbage and bring vermin to the seat of the Government, to defy police orders, to block pedestrian and vehicular traffic. These defendants are what would be commonly referred to as so-called respectable in that they all have jobs, they are students and as far as we know they have no prior criminal record, but I should think that makes this offense all the more serious, more serious than those actions done by defendants who are spurred on through narcotics, alcohol or any other means. These defendants had a choice. And God save us from those who commit wrong for a right reason. They knew what they were doing during the entire episode. They planned their course of attack with the precision and detail worthy of a military maneuver. They knew the police were watching and waiting along the streets and the route to City Hall. They were counseled not to break the law. They were commanded to desist and to move on. But they ignored both counsel and command with impunity. Their attitude and actions were deliberate, willful, intentional and defiant. Now, your Honor, one of the purposes of punishment is deterence. There have been 77 arrests in New York County since these protest cases began. By way of illustration, some of the Judges after the first few cases in late July gave jail sentences to the defendants. It's interesting to note there were no arrests after that from the 2nd of August until the 20th of August. Then came some sentences of suspended sentences and fines, and the arrests were renewed on the 20th of August. Accordingly, your Honor, the People suggest that suspended sentence or a fine would be nothing more than a judicial bawling out. These defendants have already been bawled out by the police. They have been counseled by them not to break the law, but they went ahead and did it any way. We firmly believe and suggest to your Honor that the Courts must be as militant as those who violate the law and that a suspended sentence or a fine would have no deterent effect upon these defendants. Accordingly, we respectfully request that a jail sentence be imposed on all of these defendants, especially for the reason also that even after this demonstration at City Hall, there was one the next day in which three policemen were injured. If citizens are allowed to take the law into their own hands, we can only have chaos and anarchy. Thank you, your Honor.

THE COURT: I have given careful consideration to all of the facets of this matter, and I do believe that the defendants acted from the loftiest of motives. However, we must all recognize that obeyance to all the laws which protect our rights is the heart of our democratic system. Demonstrations in the exercise of the alienable right of petition to authority, no matter how lofty and justified, must be kept within legal bounds. To countenance violations of law because it more effectively brings the grievance to public notice would only lead to anarchy and chaos. The Courts cannot lightly regard such violations or permit them to go unpunished, for to do so would encourage further violations in increasing numbers. The Court cannot dismiss the acts of the defendants as merely a youthful prank because the evidence shows that it was a planned deliberate provocation against the citizens and officials of the City of New York. I have compassions for the perpetrators of this provocation, but they cannot be permitted to go unpunished; and, accordingly, I sentence Jon Schaefer, Antonio Vasquez, Stephen Gordon and Alexander Boyer each to five days in the Workhouse. I sentence Eleuterio Gonzalez, also known as Eleuterio Rodriguez Gonzalez, Jeffrey Kalb and Joel Freedman to five days in the Workhouse. I might add that the sentences of five days each to Jon Schaefer, Antonio Vasquez, Stephen Gordon and Alexander Boyer of five days each was for violation of Section 722 Subdivisions 2 and 3, and the sentences of five days each for Eleuterio Rodriguez Gonzalez, Jeffrey Kalb and Joel Freedman was for violation of Section 722 Subdivisions 2 and 4 of the Penal Law. And for violation of Section 1220 of the Vehicular and Traffic Laws of the State of New York, I sentence George Cannon, Eleuterio Gonzalez, also known as Eleuterio Rodriguez Gonzalez, Jeffrey Kalb and Joel Freedman to ten days each in the Workhouse. All sentences to be served concurrently.

MR. KAPLAN: Would your Honor stay execution of the sentence so that a certificate may be obtained?

MR. McGINLEY: Your Honor, the People will object to a certificate being issued. We feel that the law is a simple law; that there are no involved questions as there might possibly be on a violation of 2036, which is the unlawful intrusion upon real property. We feel there are no substantial questions that can be raised on such a certificate and therefore we respectfully object to any stay and to any certificate of reasonable doubt.

MR. KAPLAN: Your Honor, I don't think justice would be thwarted greatly if a week's stay of execution would be granted so that a certificate could be presented to the Supreme Court.

THE COURT: I think that time would permit you to obtain such a certificate if it can be obtained by tomorrow. I think no great harm would be done to the defendants if this motion was denied as I do deny it.

MR. KAPLAN: Would your Honor consider a day or two then rather than a week.

THE COURT: No. The defendants will be committed at once.

MR. SCHIFFER: If your Honor please, might I just be heard on that for a moment?

THE COURT: If you so wish.

MR. SCHIFFER: I do not mean to argue with the Court but, your Honor, stays have been granted in a large number of these cases as a convenience to counsel more than anything else, in that certificates have been secured very rapidly and, your Honor, there are mainly issues in this case on the admissibility of evidence and issues of law on which your Honor has ruled which are substantial questions concerning which mainly review should be had.

THE COURT: I will say this, if I do grant the stay I want bail in each case because I am not going to grant the stay and then hope that these defendants are going to come back. I won't do that.

MR. SCHIFFER: If it please the Court, as far as the stay is concerned, we can have the papers on the certificate ready if we have to probably at the latest by Monday. And as far as bail is concerned, your Honor --

THE COURT: I will grant the stay. Each defendant is on a thousand dollars bail.

MR. SCHIFFER: Your Honor, if it please the Court, these People don't have that kind of money. The bail in these matters has been fixed, either they have been paroled or the bail has been fixed at a dollar in many cases. There is no purpose. These defendants are not going to disappear. As a matter of fact, your Honor knows probably that of the CORE defendants throught the Country, with hundreds and hundreds of arrests, in Mississippi, out of staters and so on, there have been possibly a handful, two or three or four or five people who did not appear.

THE COURT: I have had five of them myself in Brooklyn where they did not appear and that was before conviction not after.

MR. SCHIFFER: Your Honor, I have no doubt of the fact that a group of NYU students and a group of established people in this community --

THE COURT: I am not going to place them in one category and place the others in another category.

MR. SCHIFFER: All of them are established in the community. These are not people who are here over night, your Honor please.

MR. McGINLEY: Your Honor, with the precision that these defendants engineered this particular episode which ended in their conviction, they should also have taken into consideration the possibility of conviction and the need for bail rather than suffer a remand. We respectfully ask your Honor to continue the $1000 bail that you have set.

THE COURT: I am going to grant a stay of execution until what date? What date do you want? It will be on terms of bail.

MR. SCHIFFER: Well, Monday is satisfactory. But, your Honor, the stay will not have any effect if the bail is fixed at a thousand dollars.

THE COURT: Monday will be the 9th.

MR. SCHIFFER: I will have the papers processed. That will be 4 o'clock on the 9th or what time is customary?

THE COURT: Execution of sentence stayed to September 9, 1963, 4 p.m. I will make the bail $500.

MR. SCHIFFER: I'm sorry, your Honor, but these people cannot meet that sort of bail.

MR. McGINLEY: Your Honor, may I suggest that this is not a bartering room but a Courtroom.

MR. SCHIFFER: I am not bartering with your Honor.

THE COURT: Counsel is merely making an appeal on behalf of the defendants. I don't feel that he is bartering. I am trying to accomodate him the best I possibly can and within the confines of my judgment.

MR. SCHIFFER: Is this a bail bond, your Honor?

THE COURT: $500 bond or cash. It doesn't make a difference.

MR. KAPLAN: Would your Honor consider a cash alternative?

THE COURT: No. $500.

MR. SCHIFFER: Thank you, your Honor.

* * *

certified to be a true and correct
transcript of minutes in this case

Theodore Martin
Court Reporter

196-20M-702586(64) 373

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 1C1, County of NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

vs

JON SCHAEFER, GEORGE CARSON
Et al

Defendants

BEFORE

Hon. GEORGE S. BAKER

Judge.

September 3, 63

CHARGE 1202, 3, 4 and 1220
Veh. Traffic Law

TRIAL PRELIMINARY HEARING

APPEARANCES:

For the People PATRICK V. MC GINLEY, ESQ.
Asst. District Attorney

For the Defense MAURICE KAPLAN, ESQ. and
George Schiffer, Esq.

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Stephen Gordon	3	22		
Irving Mendell	57	59		
Marcella Simpson	66	68		
Morris Colman	72	74		
Donald Pappenfort	76	78		
Marshall L. Rosenberg	80	82		
Sgt. Adolph Levine	85	91	96	97

J. A. Yearwood, C.S.R.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 1C1

- x

PEOPLE OF THE STATE OF NEW YORK

-against-

JON SCHAEFER, ANTONIO VASQUEZ, STEPHEN GORDON, ALEXANDER BOYER, ELEUTERIO GONZALEZ, JEFFERY KALB, JOEL FREEDMAN, GEORGE CANNON,

Defendants

Docket Nos.:
C14230, C14231,
C14232, C14233,
C14235, C14236,
C14237, B6296,
B6297, B6298,
B6299

Charges: DC2.3,
DC2.4 and
1220 V.T.L.

- x

100 Centre Street
New York, New York
September 5, 1963

BEFORE:

HON. GEORGE S. RADER

APPEARANCES:

PATRICK W. MC GINLEY, ESQ.
Assistant District Attorney
For The People

KENNETH KAPLAN, ESQ.
37 Wall Street
Borough of Manhattan
City of New York
Attorney for Defendants
SCHAEFER, VASQUEZ, GORDON and BOYER

GEORGE SCHIFFER, ESQ.
40 East 49th Street
New York, New York
Attorney for Defendants
CANNON, GONZALEZ, KALB and FREEDMAN

Max Diamond, Court Officer
Ivan Gonima, Court Interpreter

J. A. Ydarwood, Court Reporter

COURT OFFICER: This is a continued trial. One of the defendants is not here, Your Honor.

MR. KAPLAN: May it please the Court, Mr. Schaefer is not here, Your Honor. As counsel for Schaefer, I stipulate for the record that we may proceed without his presence, in view of the fact that the charges against him are merely offenses.

THE COURT: All right.

MR. KAPLAN: Next witness is Mr. Gordon.

* * *

STEPHEN GORDON, having first been duly sworn, testified as follows:

COURT OFFICER: State your name.

THE WITNESS: Stephen Gordon.

COURT OFFICER: Your address.

THE WITNESS: 60 Knolls Crescent, New York 63, New York.

COURT OFFICER: Business or occupation.

THE WITNESS: Student, New York University.

DIRECT EXAMINATION BY
MR. KAPLAN:

Q. How old are you, Mr. Gordon?

A. 22.

Q. What year of school are you in; will you tell us?

A. A senior.

Q. When do you graduate?

A. In June 1964.

Q. When you graduate, you will graduate with a degree of what?

A. Of Education, to teach science.

Q. Now, directing your attention to the day, August 21st, and specifically at a point in the area of Lafayette and Reid or Lafayette and Chambers Streets, in that area, were you in the cab of a truck?

A. Yes, I was.

Q. By "a cab", I mean sitting up front with the driver; is that right?

A. That's correct.

Q. Who was driving the truck?

A. George Cannon.

Q. Did there come a time that the truck approached an area near City Hall Park?

A. Yes, there was.

Q. Now, during that time or at this particular time we are making reference to, did the truck have occasion to slow down?

A. Yes, it did.

Q. Please tell the Court the circumstances and what happened, at that time?

A. Pardon me?

Q. When a policeman came in the street or motioned to you, tell the Court what happened?

MR. KAPLAN TO THE COURT: If it please, Your Honor; for the sake of time, would Your Honor permit me to lead as to things we already know?

THE COURT: I'll permit you to lead, if the District Attorney would.

MR. KAPLAN: I assume it wouldn't harm the prosecution's case for the witness to know exactly what I'm making reference to.

MR. MC GINLEY: Why don't we wait and see as to what Mr. Kaplan leads to.

Q. Did there come a time when an officer motioned with his arms in that area?

A. Yes.

Q. Tell the Court what happened?

A. Well, there were several times in going down at Reid Street, there was - -

MR. MC GINLEY: Object, Your Honor. The answer is not responsive. Mr. Kaplan has taken the witness down to City Hall Plaza.

Q. In the area of City Hall Plaza, about 25 or 30 feet north of the curbcut.

THE COURT: Sustained.

A. At the point of a traffic island, approximately 20 feet before it, the truck being in the left hand lane, an officer left the vicinity of the roadcut at City Hall Plaza. I brought attention to the fact to George Cannon, who was the driver, and George Cannon, because of the position of the policeman, brought the truck to a halt.

MR. MC GINLEY: Objection.

THE COURT: Sustained.

MR. ME GINLEY: Ask to have that part stricken.

Q. What did George Cannon do? Not "because". What did he do?

A. Brought the truck to a halt.

Q. Where was the truck brought to a halt?

A. Right diagonally behind in the left hand point of the island. That is, the island extends, is a point at that location; before that point, on the left hand part of the approach, approximately 25 to 30 feet in front of the point.

Q. I show you a photograph and may we mark this for identification, before I do, People's 4.

THE COURT: People's 4?

MR. KAPLAN: I'm sorry. Defendant's 4.

THE COURT: Defendant's "D".

(PHOTOGRAPH MARKED BY COURT OFFICER)

Q. I show you this photograph and ask you if it fairly represents the scene that you witnessed; the physical scene that you witnessed, as you sat in the cab of the truck looking south? Is that about whatyou saw?

A. Yes, it is. It is an accurate representation of the scene.

MR. KAPLAN: Could that be marked, Your Honor?

MR. MC GINLEY: I just have one thing to say. This picture obviously is not an accurate representation of the scene as it appeared on August 21, 1963; therefore, MR. MC GINLEY: (cont'g) I'm assuming it's being offered only as to the physical location as it would appear on any day without traffic or pedestrians.

MR. KAPLAN: That's what I said.

THE COURT: It's offered for such purpose , and as an exhibit only for such purpose you have no objection?

MR. MC GINLEY: I have no objection.

THE COURT: Marked Defendant's Exhibit "D" only for the purpose of showing the area involved, and not the scene as it appeared upon the date and time complained of.

Q. Mr. Gordon, looking at Defendant's Exhibit "D" --

A. Yes.

Q. - - with a pen,please indicate by the letter "X" the precise place, as you remember, where the truck stopped?

A. The front of the truck would be in here.

Q. All right. Now, when the truck came to a halt, did anything happen after that?

A. Yes.

Q. What?

A. A patrolman - -

THE COURT: May I see what he has marked?

Q. That's the front of the truck?

A. Yes.

MR. KAPLAN: The "X" denotes the front of the truck, Your Honor.

THE COURT: Mr. Gordon - -

THE WITNESS: Yes.

THE COURT: - - in order that I may understand this fully, did your truck approach to the right of this light pole or to the left of it? In other words, did it approach here or did it approach here?

THE WITNESS: It approached on the left hand lane to the right.

THE COURT: You came this way?

THE WITNESS: No, from the left hand side, down.

THE COURT: It approached from the right of the light pole?

THE WITNESS: Right; but it was on the lane closest to the light pole.

THE COURT: And then it stopped right here?

THE WITNESS: That's correct.

THE COURT: Very good.

Q. Now, when it stopped, you said something happened; is that right?

A. That's right.

Q. What happened?

A. The patrolman asked Mr. - -

Q. Excuse me. When you say "patrolman", did you see that patrolman in Court?

A. Yes.

Q. What was his name?

A. Patrolman Houston.

Q. Tell us what happened?

A. The patrolman asked Mr. Cannon if he had a permit to hall garbage, and at that time, immediately following Mr. Houston's words, he waved, using a beckoning motion.

THE COURT: what did Mr. Cannon say to him?

THE WITNESS: I didn't hear the reply.

THE COURT: You didn't hear the reply?

THE WITNESS: No, I did not.

THE COURT: You were sitting next

THE COURT: (cont'g) to him?

THE WITNESS: Thats' right.

THE COURT: All right.

A. (cont'g) He beckoned him into a - the place where the truck was finally brought to a halt.

MR. KAPLAN: Mark this Defendants' "E", please.

COURT OFFICER: This is already marked.

Q. I show you Defendant's "B" and ask you, with a pen, to outline as well as you can remember where the truck finally came to a stop; trying to keep the perspective right. The truck is a big truck. Make it - -

A. Judging by the widhh of the bus, this way.

Q. Put an "X" where the front of the truck would be. Headed south; right?

A. Right.

MR. MC GINLEY: May I see that?

MR. KAPLAN: Yes.

MR. MC GINLEY: Do I understand from that picture that the truck is up against the lamppost?

MR. KAPLAN: No. The art work

MR. KAPLAN: (cont'g) would show it behind the lamppost. When he drew it, he had to draw it behind the lamppost.

THE COURT: Where would the front of the truck be? Is this the front or the rear of the truck?

THE WITNESS: That would be the rear of the truck where your finger is now.

MR. KAPLAN: I think the witness put an "X" where the front would be.

THE COURT: The "X" ison the pole. It would be behind the pole?

MR. KAPLAN: Yes.

THE COURT: In other words, what you have shown by the square is the rear view of the vehicle; is that correct?

THE WITNESS: That's correct.

THE COURT: All right, sir.

Q. Now, if you remember, was the entire vehicle, that is, the entire truck - -

THE COURT: What exhibit?

MR. KAPLAN: That's "B" Your honor.

Q. Was the entire truck on the white lines that are indicated in Defendant's "B"?

A. No, it was not.

Q. Was any portion to the left of the white lines?

A. About 80%.

Q. If you remember.

A. About 80%.

Q. Was left of the white lines?

A. That's correct. Excuse me. I have my directions mixed up. About 20% to the left, facing south. I was thinking facing north.

Q. Listen to my questions very carefully. Before you answer, think about it; all right?

A. Right.

Q. Now, the truck then came to a halt; is that right?

A. That's right.

Q. You were still sitting in the cab?

A. That's right.

Q. Then what happened?

A. At that time, Patrolman Houston asked Mr. Cannon for his license and registration. Approximately 15 seconds after the patrolman said his words, I left the cab of the truck, proceeded to the door in the body of the truck and had my hand on the handle of the truck, the door of the truck. At that time - -

THE COURT: Did you say that was on what side?

THE WITNESS: On the - facing south, it would be the right hand side of the truck.

THE COURT: You say as you proceeded to the right side of the truck - -

THE WITNESS: That's right.

THE COURT: - - you placed your hand - -

THE WITNESS: My right hand on the handle.

Q. Was your hand on the handle?

A. Yes.

Q. Then what happened?

A Patrolman came from my rear, accosted me by placing - -

MR. MC GINLEY: Objection, Your Honor, to the term "accosted".

THE COURT: Sustained; strike it out.

Q. Patrolman came to the rear and did what?

A. Grabbed me by my left arm, and said I was under arrest, and pulled me away from the door of the truck.

A. (cont'g) Then he released me. I felt no hand on me. I looked around. I couldn't see any patrolman within three feet of me, although there were many in the area; and I proceeded to the rear of the truck. Upon which a - I heard an officer say - -

MR. MC GINLEY: Objection, Your Honor, to any - -

THE COURT: Identify him.

Q. Do you know what officer it was?

A. I do not know.

THE COURT: You have the picture here. See if he can identify him.

Q. Would you remember, if I showed you a picture?

A. Maybe.

Q. Would you remember by looking at People's 3? Do you remember which officer it is?

A. No, I do not. The officer - I cannot see him in this picture. He was a man in policeman's uniform, with gold braid, and a gold band on his cap. That's all I know.

Q. Do you recognize him from that picture?

A. No, I do not.

Q. All right.

A. Told another police officer, a man in policeman's uniform, to place me under arrest.

MR. MC GINLEY: Your Honor, I object to that.

THE COURT: Sustained; strike it out.

Q. As a result of what one officer said to another, what happened?

A. An officer approached me, put- grabbed me by my left arm, told me I was under arrest, and placed me inside a silver gray police car, unmarked car, to the rear of the truck.

Q. And that's where you sat?

A. That's where I sat.

Q. At any time were you in the bed of the truck? That is, at any time as it came down on the trip from Allen St. to City Hall Plaza?

A. No, sir.

Q. You were in the front all the time?

A. That's correct.

Q. At any time, did you remove any debris from the truck and throw it over the side?

A. I did not.

Q. Now, directing your attention, going back for just - in time a bit, when - as the truck was approaching south on Lafayette St., it came at one point to the corner of

Q. (cont'g) Reid; is that right?

A. That's right.

Q Doyou remember, was there a traffic light there?

A. There was.

Q. Were the police officers there, too?

A. Yes.

Q. Would you tell us what happened when the truck approached the red light at Reid and Lafayette?

A. The truck was waved on by p0lice officer.

Q. Now, did there come a time - by the way, did you see other traffic behind you or in front of you?

A. Yes.

Q. Othere cars?

A. Yes.

Q. Were they waved on or did they stop?

A. They stopped.

Q. Did there come a time when the truck in which you were in approached Lafayette and Chambers?

A. Yes.

Q. Is that south of Reid?

A. Yes, it is.

Q. Is there a light there at Chambers St.?

~~A. Yes, sir.~~

Q. What color was the light on August 21st, during the time we are speaking of?

A. When the truck approached, the light was red.

Q. Were there officers in the area?

A. Yes.

Q. Please tell the Court what happened?

A. The truck was waved on through the red light.

Q. That was the second light; is that right?

A. That's correct.

Q. Now, continuing on the trip, as the truck approached Spruce St., or as the truck approached the Munidpal Building - -

A. Yes.

Q. - - did Mr. Cannon do or say anything?

A. He was signalling to the left.

Q. How do you know he was signalling?

A. Because I saw him put his hand on the signal lever, press it down, which gives a left hand signal, and I heard the clicker in the cab of the truck indicate a left hand turn.

Q. Now, this was at a point north of the Municipal Building?

A. That's correct.

Q. Now, dád he make the left hand turn into the Municipal Building?

A. No, he did not.

Q. Why didn't he?

MR. MC GINLEY: Objection.

THE COURT: Sustained.

Q. Then, did there come a time that you approached Spruce St., in the area of Spruce St., north of Spruce St.?

A. Could I refer to the map a minute, please?

MR. KAPLAN: Referring to Defendant's "D".

THE WITNESS: Yes.

Q. Do you recognize this turn?

A. Yes, I do.

MR. KAPLAN: Indicating Spruce St. turn, Your Honor, for the record.

THE COURT: Yes.

Q. Did there come a time whem the truck approached that - the area of that turn? Yes or no.

A. Yes.

THE COURT: May I see the exhibit?

MR. KAPLAN: Yesm Your Honor.

Q. At this particular time we are speaking of,

Q. (cont'g) was the blinker still on?

A. Yes, it was.

Q. Is it your testimony that the left hand blinker, as far as you know, was on continuously from a point - -

MR. MC GINLEY: Your Honor, I object to counsel leading - -

THE COURT: Sustained.

Q. Tell us how long the blinker was on?

MR. MC GINLEY: I object to the witness stating how long the blinker was on. All he can testify to are the mechanics - -

MR. KAPLAN: Mr. Mc Ginley is right, Your Honor.

THE COURT: You withdraw the question?

MR. KAPLAN: Yes, Your Honor.

Q. For how long a period of time did yousee the indicator on the dashboard indicate to you that the left hand turn was desired by the driver?

A. Since before entering the vácinity of the Municipal Building.

THE COURT: How long did it take to get from the point where the indicator

THE COURT: (cont'g) went on and until the point now mentioned, in time?

THE WITNESS: To the point where the patrolman stopped the truck?

THE COURT: Yes.

THE WITNESS: It took - it was less than a minute. That's all I can say.

THE COURT: All that time you were just watching the indicator?

THE WITNESS: It was clicking and I had my eye on the dashboard, because I was - -

THE COURT: You were watching the dashboard all that time?

THE WITNESS: It was in my field of vision.

THE COURT: Weren't you paying attention to the officer, who you say was approaching?

THE WITNESS: I could see both very clearly, because the dashboard is clearly marked, and in full view. It's possible to see within 180 degree radius.

THE COURT: All right, proceed.

Q. By the way, do you know who booked you at the police station?

A. I do not.

MR. MC GINLEY: I object to anything that went on after the arrest took place.

THE COURT: Sustained.

Q. You testified to the effect that a police officer said you were under arrest. I think two police officers; is that correct?

A. That's correct.

THE COURT: He said - he alleges that he was arrested once when he put his hand upon the door, and then was almost immediately released, and he walked to the rear of the truck where he was - as he put it - he was again arrested. Which arrest do you refer to?

Q. Let's speak of both arrest or either. Was either arresting officer Officer Dillingham who testified the other day?

A. No, he was not.

Q. Do you know who the officer was?

A. I do not know his name.

Q. If I show you one of these exhibits which has the officer's picture, would you recognize him?

A. He is not in this exhibit.

THE COURT: When yousay "this exhibit", turn it over and tell us which exhibit.

ATHE WITNESS: That would be People's Exhibit "3" for identification.

MR. KAPLAN: No further questions.

CROSS-EXAMINATION BY
MR. MC GINLEY:

Q. You are anactive member of C.O.R.E.; are you not?

A. That"s correct.

Q. How long have you been such a member?

A. For approximately six months.

MR.KAPLAN: Your Honor, I object and move to strike out that question and answer. One, it is irrelevant; two, it goes way beyond the scope of my direct. I was very carefil about that.

MR. MC GINLEY: Your Honor, I am sure there is some latitude in cross-examination, and it is better that we know

MR. MC GINLEY: (cont'g) the background of the witness.

THE COURT: I'm looking at it from another angle. Let me explore this. The question of C.O.R.E. was brought in by your previous witness, Mr. Freedman. He said that it had been planned as part of the activities of this group. Now, I think the District Attorney has a right, if he so desires, to determine that the defendant was a party in this plan, and what, if any, part he played in it, and since the plan was under the auspices of a certain organization, I think he has a right to determine whether this witness was a member of this organization, and whether he took part in this plan. On that ground, I will deny it - overrule your objection.

MR. KAPLAN: Will your Honor then permit further evidence concerning these activities, which has been previously excluded?

THE COURT: We are only speaking of

THE COURT: (cont'g) the activities that are germane to the issues, that is, to the charges herein. A group may have a great many activities, but so far as this Court is concerned, I will only permit evidence with regard to those matters undertaken by this group which relates directly, not collaterally, but only directly tothe charges herein. Proceed.

Q. Mr. Gordon, how long before August 21 did you confer with Freedman or various other people as to this debris-laden truck?

MR. KAPLAN: I object, Your Honor.

THE COURT: Over-ruled.

MR. KAPLAN: To save time, may I say this. I have a blanket objection to all questions relating to any discussions prior in time to the point of time that I took the defendant through on direct examination. May I have a blanket objection to any question prior to that?

THE COURT: Overruled.

A. Re-state the question, please.

Q. ~~Surely. How long before August 21st did you~~

Q. (cont'g) confer with Freedman and various other C.O.R.E. people with respect to this debris-laden truck and its ride to City Hall?

A. I would not know the exact time on this.

Q. You don't have to be exact. Give us an approximation.

A. I donot know the first time that this came up for discussion.

Q. Can't you even say it was a week, two weeks?

A. I would say at least a week.

Q. Did you have a meeting on August 21st before the ride commenced?

A. No, I did not.

Q. Did you attend any meeting attended by other C.O.R.E. people or these other defendants as to what part you would play in this truck ride to City Hall?

A. Yes, I had.

Q. And were you assigned a specific duty?

A. I was to ride in the cab of the truck, yes.

Q. When the truck entered on Park Row, just after it passed Chambers St., what lane was it in?

A. May I please refer to the map?

Q. I'm sorry?

A. I would like to refer to the map.

THE COURT: Provide the witness with the map.

A. Would you please re-state the question?

Q. At the time you commenced on tomPark Row, just after passing Chambers St., what lane was the truck in?

A. It was in the center left.

Q. Center left?

A. That's right.

Q How many lanes do you see there? How many lanes do you recognize having seen?

A. There are at least five lanes of traffic.

Q. So in that five, where would you put the truck at the point I asked you about, starting from the right and going across?

A That would place it in front of the Municipal Building. It would be in the third - straddling the third and fourth lanes, if it's divided evenly into five lanes, putting it closest to the Municipal Building.

Q. There was traffic to the left of the truck at that point?

A. No, there wasn't.

Q. No traffic at all?

A. When you say "left", what do youmean by "left"?

Q. To the left of the truck as it's proceeding south?

A. No, there wasn't.

Q. How about to the right of the truck?

A. There was.

Q. Much traffic?

A. What do you mean by "much"?

Q. You're a science student, you tell us - -

MR. KAPLAN: I Object to arguing with him, Your Honor.

THE COURT: Sustained.

Q. "Much" would be more than ten, I'd say. Did you see more than ten cars to your right as you proceeded south?

A. No, I didn't.

THE COURT: How many cars did you see?

THE WITNESS: Maybe three or four.

Q. So you would say vehicular traffic was light?

A. That's right.

Q. How about pedestrian traffic? Didyou see many people around the City Hall area?

A. I saw people leaving the subway station, City

A. (cont'g) Hall Park, and proceeding along their way.

Q. Did you see any C.O.R.E. pickets around City Hall Park?

A. Not at that time. Not - when you are placing the time, you are placing the truck in the vicinity north of Chambers St.?

Q. No, south of Chambers.

A. South of Chambers, as the truck approached the bend of City Hall Park, I did see pickets.

Q. Did the truck veer to the right to get over to where the pickets were?

A. No, it did not.

Q. When did you see a policeman who allegedly waved the truck over? At what point?

A. There is a traffic island, which is diagonal to the curbcut, and approximately 20 feet north of that, the point of that traffic island, the policeman stepped in front of the truck.

Q. Was that Patrolman Houston?

A. Yes, he was - approached the truck.

Q. Was he standing out in the roadway at the time he approached the truck?

~~A. He was marching in that direction. Walking in~~

A. (cont'g) that direction to the point - -

Q. Where was he?

A. He was originally in the vicinity of the curb-cut, and walked to a position which would place him in front of the trajectory - the path of the truck.

Q. That would have put him out into the second lane, would it? If you wount from the right, one, two?

A. Second lane from the right, that's correct.

Q. Now, there was traffic to your left at that point; wasn't there?

A. Yes, there was.

Q How about to your right, was there any traffic to your right?

A There was.

Q. Did the police officer stop the traffic to your right before he waved your truck over?

A. He - the traffic was light, and there was no car at that moment.

THE COURT: Answer the question.

Did he stop any traffic to the right?

THE WITNESS: No.

Q. Did you hear Patrolman Houston testify that before he waved the truck over - and he did admit waving the truck over - -

A. Yes.

Q. - - that it had come to a full stop over in the second lane, and then he waved it over to the right lane?

A. I do not recollect - recall that exact testimony.

Q. Suppose you had heard him say that, would that be correct?

A. I do not recall the exact testimony that Mr. Houston gave.

Q. You said that. But if I tell you that he said the truck had come to a complete stop in the second lane, and at that point he waved it over into the right lane, would he be correct?

A. Yes.

Q. So then it wasn't one continuOus - -

(AT THIS POINT THE DEFENDANT JON SCHAEFER CAME INTO THE COURTROOM.)

THE COURT: Is there any reason why the defendant Schaefer can't be here in time?

MR. KAPLAN: Your Honor, the defendant Schaefer says that he was at the subway five minutes to nine, and that there was some kind of a holdup or tieup in - when

MR. KAPLAN: (cont'g) the subway train was within the station and it stood there for some time.

THE COURT: That was the same sort of a story that was given yesterday. Reason for me to doubt both of the incidents happened. Yesterday defendant came in - instead of 9:30, came in about the same time, and should thiscase go on beyond today, I expect the defendant to be here on time; especially since I announced last night, before we adjourned, that I expected everybody here at 9:30. Defendant Schaefer shall make it his business to be here at 9:30. He won't be excused in the future. All right, proceed.

MR. SCHIFFER: Excuse me, Your Honor, the record of Mr. Houston's testimony is right here. I think there is some confusion on this point. In order to be sure that there is no confusion, would you care to read it?

THE COURT: I don't think there will be any confusion. The witness said he

THE COURT: (cont'g) doesn't remember what was said. That's his attitude. He must have heard a great deal of testimony and I can understand in this great deal of testimony there issomething that he didn't hear and it made no impression on him. I don't think it's of great importance.

MR. SCHIFFER: All right.

MR. MC GINLEY: May I continue?

THE COURT: Yes.

Q. At the point that you were waved over, from the second to the right lane by Officer Houston, did you notice whether or not the interior reflector in the truck was blinking?

A. The interior reflector?

THE COURT: The interior signal light, I think it is.

MR. MC GINLEY: Yes.

A. It was blinking at that time.

Q. It was?

A. Yes.

Q You took notice of that; did you?

A. Yes. He had to move the handle down again.

THE COURT: Excuse me just for a moment. Where are these signals;on the dashboard or are they on a device that's attached to the steering column?

THE WITNESS: The handle which operates it - -

THE COURT: No, I'm talking about the lights, the indicators.

THE WITNESS: Are on the dashboard.

THE COURT: You are sure they are on the dashboard?

THE WITNESS: Yes.

THE COURT: What portion of the dashboard are they on?

THE WITNESS: They are near the speedometer.

THE COURT: Where is the speedometer? Is that in front of the - -

THE WITNESS: In front of the wheel.

THE COURT: Right in front of the wheel?

THE WITNESS: You can see the position, yes. Approximately.

THE COURT: And the left indicator

THE COURT: (cont'g) would be to the left of the steering post; is thatright?

THE WITNESS: That's right.

THE COURT: And you were able to see beyond the steering post?

THE WITNESS: It's above and to the left. The steering post of the truck is underneath.

Q. What blinking color did you see from the inside on the indicator?

A. The green.

Q. It's not red?

A. That's right.

Q. And is it an arrow-type or dot-type? What type?

A. I could just see - it looked like, to me, a bar.

Q. Like a bar?

A. That's right.

Q Could you be more descriptive?

A. No.

THE COURT: Rectangular?

THE WITNESS: Rectangular.

Q. When the truck went into the right hand lane, did you get out immediately after it stopped?

A. Ten, fifteen seconds after.

Q. And during that 15 or 20 seconds,you heard Officer Houston ask Mr. Cannon whether he had a license to hall garbage?

A. No.

Q. You didn't hear it then?

A. No.

Q. When did you hear that?

A. When Patrolman Houston originally stopped the truck.

Q. Well, now, didn't you testify that Patrolman Houston didn't stop the truck and that it stopped - -

A. Technically, Mr. Cannon stopped the truck. He put his foot on the brakes, yes, but Mr. Houston was in front of the truck.

Q. At which point?

A. At the point where he walked out in front of the island.

Q. Well, you recall my asking you a few moments ago as to Patrolman Houston's testimony? He testified that he stopped or that he waved the truck over after it had stopped in the second lane.

A. That's right.

Q. You said you didn't recall that testimony, but I asked you to assume it was his testimony, and asked whether

Q. (cont'g) it was true and you said it was. Are you now changing your answer?

A. No, it's the same answer.

Q. When you were over in the right hand lane, you got out of the truck after 15 or 20 seconds?

A. I said 10 or 15.

Q. And you walked to the right rear of the truck?

A. That's correct.

Q. Put your hand on a door, you say?

A. That's correct; the handle of the door.

Q. The handle of the door. At that point, did you see debris or rubbish coming out of the truck?

A. No, I did not.

Q. Did you ever see debris or rubbish coming out of the truck?

A. Yes.

Q. At what point, in relation to your coming around the truck did you see - -

A. No, I did not.

THE COURT: Where were you?

THE WITNESS: I was placed - when it became - when it came off the truck, when I was already inside the police car.

Q. Already inside the police car?

A. That's correct.

Q. What time interval elapsed from the time you got out of the cab of the truck until the time you were in the police car?

A. Approximately a minute.

Q. One minute?

A. Approximately.

Q. How many times did you get into the police car that day?

A. I believe once.

Q. Just once?

A. Excuse me; twice. Once on the way back, after I was arrested, driving me to the police station.

Q. After you were arrested. Before you were arrested, you got into the police car once?

A. No. I was placed under a rrest; placed into the police car.

Q. You were placed under arrest twice; isn't that correct?

A. That's correct. After the secnnd time - -

Q. And all that took only one minute?

A. About that. Minute, maybe two. I did not time it.

Q. Now, you said when you got out of the cab and proceeded to the side, where you put your hand on the handle, that you were grabbed by a police officer; right?

A. Yes.

Q. Did he say anything to you?

A. Yes.

Q. But you don't know who he was?

A. No; he was behind me.

Q. After he spoke to you - for how long did he speak to you, incidentally?

A. Just said those words, "You're under arrest".

Q. Did you say anything to that?

A. No, I didn't.

Q. But then he released you?

A. Yes.

Q. Where did you go when he released you?

A. To the rear of the truck.

Q. And at the rear of the truck, did you see garbage or debris coming out of the truck?

A. No, I didn't.

Q. Did you see where any of your co-defendants were at the time you got to the rear of the truck?

A. No, I didn't.

Q. Then another officer approached you and this

Q. (cont'g) officer told you you were under arrest?

A. Yes, that's right.

Q. Was this a different officer from the first one?

A. Yes.

Q. Did you tell him you were already placed under arrest by somebody else?

A. No, I didn't.

Q. And that officer then put you in an unmarked car?

A That's correct.

Q. At any time, did you lie down on the ground?

A. No, I did not.

Q At anytime, did you clasp arms with Schaefer?

A. No, I did not.

Q. Did you clasp arms with anyone?

A. I did not.

Q. Did you at any time spread any of the debris or garbage that was on the ground?

A. No, I did not.

Q. Did you sing or did you chant at any time?

A. I did not.

Q. You didn't lend your voice to this effort?

A. Idid not.

Q. And while youwere being placed under arrest, the

Q. (cont'g) second time you were being placed under arrest, what were the C.O.R.E. pickets doing?

A. They were marching within an enclosed barricade.

Q. How many feet away from you, would you say, approximately?

A. 30, 40.

Q. Were they to your right or going west from your location?

A. From the police car?

Q Yes.

A. They would be to the front and to the right; direction approximately south-southeast.

Q. South-southwest, wouldn't it be?

A. South-southwest, yes, you're correct.

Q. Did these pickets sing or chant any songs from their location?

A. Yes.

Q. What were they singing or chanting?

A. I heard - could make out just one word.

Q. What was that?

A. "Freedom".

Q. Were there any pedestrians on the sidewalk at that point?

A. Yes.

Q. What were they doing?

A. Walking by.

Q. Didn't any of them stop and look?

A. I didn't see anybody stop. Whebher they were looking, I didn't see.

Q. You saw people walk by?

A. That's right.

Q. Were there any people or pedestrians in the street, around the area where you were; around the area of the silver-gray police car?

A. There were. I saw many policemen. I don't know whether any were pedestrians. Might have been photographersor reporters, but I didn't see - -

Q. Don't you consider those people pedestrians?

A. I don't know what the exact definition of "pedestrian" is.

Q. Anyone who wasn't in uniform. Let's use that definiton. Howmany people did you see standing around the area where you were who was not dressed as a policeman is dressed?

A. Maybe four, five, six; maybe.

Q. That's as far as you go?

A. That's about it that I saw.

Q. How about vehicular traffic? What was the coddition of that, at the point that you were put into the silver-gray police car?

A. Well, while I was getting into the car, I didn't see vehicular traffic. When I was in, I did.

Q. Was it backed up?

A. Not that I could see. The policemen were waving it on.

Q. Traffic was flowing as normally as ever?

A. Policemen were waving the truck on.

THE COURT: Answer the question.

A. I don't know what "normally" means.

Q . As normally as you told me.

A. It was moving.

Q. You said that it was moving and that it was sparse or that you didn't see many cars at all; four, five cars?

A. At the point of the Municipal Building, yes, that's right.

Q. Now, we are at the point where you are being placed in the silver-gray car. What was the condition of traffic at that time?

A. There was a string of cars that were moving by.

Q. Was there any traffic to your right - to your

Q. (cont'g) left or to the left of the silver-gray police car?

A. Yes.

Q. What was the condition of thattraffic?

A. There was a string of cars moving by.

Q. When you were in back of the truck - and you had to be in back of the truck to go into the silver-gray car - didn't you - -

A. Say this over again, please.

Q. Wereyou in back of the truck when you were placed into the silver-gray police car?

A. To the rear of the truck.

Q Doesn't rear and - -

A. I was not in the back of the truck.

Q. You were to the rear of the truck?

A. That's correct.

Q. Where were any of your co-defendants at that time?

A. In the rear of the truck, some of them were.

Q. They were standing in the body of the truck?

A. Yes.

Q. Were any of them on the ground, to the rear of the truck?

A. I saw Mr. Schaefer being placed on the ground.

A. (cont'g) I didn't see exactly howhe got there.

THE COURT: Was he on the ground when you saw him?

THE WITNESS: Yes, he was.

Q. And you were placed on the ground, along with Schaeffer; weren't you?

A. No, I was not.

Q. Did you see a Sgt. Levine at all, back of the truck, in the rear of the truck?

A. No, I didn't.

Q. Were you at any time in close proximity to Schaefer after you got Out of the cab of the truck, or were you completely separated from him, from that point on?

A. I was completely separated from Mr. Schaefer at all times.

Q. Incidentally, was there anyone else put into this silver-gray police car with you?

A. No, there wasn't.

Q You were all by yourself?

A. That's correct.

Q. Did you see what, if anything, happened to any of your co-defendants?

A. Yes.

Q. Who did you see? What happened to them?

A. Well, I saw Joel Freedman and Alexander Boyer, Jeffery Kalb and Martinez Gonzales and Vasquez being led out of the back of the truck, through the rear gate.

Q. Did you see any of these people throw debris from the truck?

A. I saw them remove material from the truck.

Q. All of the people that you just mentioned: Kalb, Boyer, Freedman - -

A. No, I didn't see all of them.

Q. Which ones did you see?

A. The - I - excuse me. I did not see any of them remove any of the material fromthe truck. I saw them being led out of the truck.

THE COURT: Didn't you just say a minute ago, in the question before, that you did see them?

THE WITNESS: I saw material being removed. I did not see exactly who by.

THE COURT: You were looking into the truck?

THE WITNESS: That's right; but there were policemen in the truck.

THE COURT: Truck in your full view?

THE WITNESS: The rear of the truck

THE WITNESS: (cont'g) was - I was inside the police car, in the back.

THE COURT: You had a full view of the interior of the truck, with you standing to the rear of it?

THE WITNESS: I was in the back seat of the car. It was a difficult position to see exactly into the truck, and clearly. Also, my eyes make it very difficult for me to recognize people at that distance.

THE COURT: Did you see somebody, without being able to recognize who they were, did you see people in the truck?

THE WITNESS: I saw people in the truck.

THE COURT: And did you see - without being able to identify them - did you see what they were doing, with relation to the debris?

THE WITNESS: I saw debris coming over the side. That is, dropping down into the street.

THE COURT: No.

THE WITNESS: And to the sideway,

THE WITNESS: (cont'g) but I could not - -

THE COURT: Please try to be responsive to my question. You were looking to the rear of the truck and you saw debris being removed?

THE WITNESS: That's correct.

THE COURT: You saw people do this?

THE WITNESS: Yes.

THE COURT: You aren't able to remagnize who they were, you say?

THE WITNESS: That's correct. At that time - -

THE COURT: But all of the people in the truck were engaged in handling this debris; is that correct?

THE WITNESS: I did not see all of the people until they were removed. I just saw - -

THE COURT: How many pepple did you see engaged in removing debris? Who were in the truck.

THE WITNESS: Maybe two.

THE COURT: All right.

MR. MC GINLEY: I would like to have this photograph marked "People's Exhibit 4 for Identification".

THE COURT: Have it marked.

(PHOTOGRAPH MARKED BY COURT OFFICER.)

Q. I show you People's Exhibit 4 for Identification--

A. Yes.

Q. - - you see certain people in that photograph?

A. Yes.

THE COURT: You see what?

Q. Certain people in that photograph.

A. Yes, I do.

Q Are you one of them?

A . Yes, I am.

MR. SCHIFFER: Your Honor, we object to the photograph.

MR. MC GINLEY: I object to counsel's objection. Mr. Kaplan is the attorney who is conducting the direct or conducted the direct examination, and I ask Mr. Kaplan to make the objections as required.

THE COURT: Correct.

Q. Now, I asked you a few moments ago whether you

Q. (cont'g) were ever in the company of Schaefer?

A. At what time?

Q. At any time from the time you got out of the truck until the time you were placed under arrest.

MR.KAPLAN: May I say this. I wouldn't pursue this at all, but it's marked for identification. Could we first qualify the picture by asking the witness if he recognizes it, and give t he exact time and place. I wpuld prefer no questions being asked until it is actually an exhibit as evidence.

MR. MC GINLEY: The question has no particular relation to the picture.

THE COURT: No, just show it to him. It's marked - the picture is marked for identification. Now it's been marked for identification he has a right to use it to show to the witness. The objection is wellpfOunded in thatit may be used to refresh his recollection. Now you may show him the picture and ask him if this refreshes his recollection as to whether or not - -

MR. MC GINLEY: I think the question

MR. MC GINLEY: (cont'g) first was a preliminary to that.

THE COURT: You show him the picture. Strike out all of the questions and answers after identification. After marking the exhibit for identification. Now, you may ask him a series of questions.

Q. You recall testifying moments ago you werenot with Schaefer from any time frim the time you got out of the cab of the truck until the time you were placed in the silver-gray police car?

MR. KAPLAN: I object to the question, and again with reference to the photograph, if Mr. Mc Ginley wishes to introduce - -

MR. MC GINLEY: I may not introduce it, Your Honor.

MR. KAPLAN: If these questions are not for the purpose of introducing it, then I withdraw my objection.

MR. SCHIFFER: May I have the question read back?

THE COURT: It's withdrawn. Please start all over again.

Q. You see People's Exhibit 4 for Identification before you?

A. Yes.

Q. Now, does that depict a scene as it took place on August 21st, immediately prior to your arrest?

A. No, it does not.

Q. Does it depict a scene immediately after your arrest?

A. No, it does not.

Q. Does it depict any scene that you saw on the 21st of August?

A. Yes, it does.

Q. What scene was that?

A. It's a scene after I had been taken out of the silver-grey police car and was about to be placed within a bus.

Q. Which bus was that?

A. It was a city bus. I don't remember its license number or number.

Q. But you do identify it as a scene on the 21st of August, at the time and place thatyou have just mentioned; is that right?

A, At the time and place just mentioned.

MR. MC GINLEY: I offer this as People's Exhibit 4 in evidence.

MR. SCHIFFER: Your Honor, since it is subsequent, I object.

MR. MC GINLEY: Your Honor, once again I object to Mr. Schiffer making the objection. Let the proper attorney make the proper objection.

THE COURT: Gentlemen, at the beginning of these proceedings, in order to avoid such - what we now have occurring, I asked that Mr. Kaplan represent some of the group of defendants and Mr. Schiffer represent the others. Now, in order to afford latitude and in the interest of justice and because defendants' counsel seem to think they could better present their defense, I permitted Mr. Kaplan to take over part of the duties. As I am permitting Mr. Kaplan to take over part of the duties, I am expecting him to carry them. We can't have this great confusion of both attorneys objecting to testimony that only affects

THE COURT: (cont'g) one attorney's clients in the direct examination. Now, let's try to adhere to it so that we might have an orderly trial.

MR. SCHIFFER: Yes, Your Honor.

MR. KAPLAN: I have no objection to this.

THE COURT: All right. Mark the picture Exhibit 4.

(PHOTOGRAPH MARKED BY COURT OFFICER)

Q. So that when I ask you whether you were in the company of Schafer at any time after you got out of the cab of the truck on August 21st, your answer must now be "yes"; isn't that correct?

A. Willyou repeat that again.

BY REPORTER: "QUESTION: So that when I ask you whether you were in the company of Schaefer at any timeafter you got out of the cab of the truck on August 21st, your answer must now be "yes"; isn't that correct?"

A. That's correct.

Q. Do you know what officer, if any, put Schaefer on the ground?

A. No, I do not.

Q. But you were never placed on the ground by any officer?

A. That's correct.

Q. Did you see Freedman, Schaefer, Vasquez and Boyer join arms and sing "We shall overcome"?

A. I did not see them all.

Q. I'm sorry. You did not see them all?

A No, I did not.

Q. Did you see certain of the defendants clasp arms together and sing or chant that particular song, "We shall overcome"?

A. Yes, I did.

Q. Who m did you see?

A. Within my range of vision, I was able to see Schaefer, Boyer and Freedman.

Q. Just those three?

A. That's right.

Q. Were they in a group or circle?

A. No, they weren't. They were in a semi-circle. I could see just an arc.

Q. You were in the car at that time?

A Yes.

Q. Didyou ever see Schaefer put into any car?

A. I - a bus.

Q. At what point were you taken out of the silver-gray police car and put in the bus?

MR. KAPLAN: Your Honor, I object. Because these are post-arrest events, I say they are irreâevant.

THE COURT: I think the District Attorney is using this to attempt to affect credibility. Please come to the point.

MR. MC GINLEY: Yes, Your Honor.

THE COURT: On that basis, your objection is over-ruled.

Q. At what point were you taken out of the silver-gray police car and put in the bus?

A. The exact time I do not know.

Q. Do you know where Schaefer was when you were taken out of the silver-gray police car?

A. I did not see him at that point.

Q. Have you ever been convicted of a crime?

A. No, I have not.

Q. And once again I ask you whether you at any time scattered any debris or garbage on the ground?

MR. KAPLAN: I object to that, Your

MR. KAPLAN: (cont'g) Honor.

MR. MC GINLEY: It would have only taken a quick yes or no. The objection - -

THE COURT: I will permit him to answer it for the last time. Yes or no?

THE WITNESS: No, I did not.

MR. MC GINLEY: I have no further questions.

MR. KAPLAN: No further questions. Would Your Honor grant us about five minutes? I assure the Court - -

THE COURT: All right.

COURT OFFICER: There will be a five minute recess; stay near or close to the Courtroom.

(AFTER COURT WAS RE-OPENED, THE FOLLOWING TESTIMONY ENSUED.)

MR. KAPLAN: Mr. Mendell.

* * *

IRVING MENDELL, having first been duly sworn, testified as follows:

THE COURT: What is your full name?

THE WITNESS: Irving Mendell.

THE COURT: Your address?

THE WITNESS: 125 West 16th St., Manhattan.

THE COURT: Your business or occupation?

THE WITNESS: I have a stationary store at 91 7th Avenue, Manhattan.

DIRECT EXAMINATION
BY MR. KAPLAN:

Q. Mr. Mendell, do you know Stephen Gordon?

A. I do.

Q. How long haveyou known him?

A. Since he was born.

Q. Do you know his family?

A. Yes.

Q. Do you know friends of his?

A. Yes.

Q. Do you have mutual friends?

A. Yes.

Q. At one time, you lived in the community where he lived?

A. Yes.

Q. Have you bubsequently moved out of that community?

A. I have.

Q. Have you kept in touch with various friends,

Q. (cont'g) relatives, mutual acquaintences?

A. Yes.

Q. Do you know his reputation for honesty and integrity, amongst these acquaintences?

A. It's always been of the best.

MR. KAPLAN: No further questions.

CROSS-EXAMINATION
BY MR. MC GINLEY:

Q. How long has it been since you moved away from the area that you and Gordon both lived?

A. 15 years.

Q. So that the last time you lived in the same area where Gordon lived he must have been about seven years old?

A. That's right.

Q. Do you know where he went to high school?

A. No, I'm not sure what high school.

Q. In other words, you haven't kept track of him for the last 15 years?

A. Only insofar as when people meet, they discuss their children and family groups.

Q. And when did you learn that he had been arrested or rather, charged with the crimes - with the offenses that he is now charged with?

A. I heard something on thâ radio, I believe, or perhaps it was - perhaps it was in the "Times". When I noticed the similarity of names,I called to find out and found it was him; because we have been very close; our families have been close.

Q. When did you last speak to anyone concerning his reputation? Can you give us an approximate date?

A. Well, I'd say just before the summer; before his people went for vacation, they were at our house. We - -

Q. You say "his people". Do you mean - -

A. His mother.

Q. Mr. Gordon's mother and father?

A. His mother and father; and we talked about what he is doing and planning, and school. Just in general course of conversation.

Q. Surely. But would you tell me when, if ever, you spoek to anyone other than his family about him?

A. Well, there are friends of the family who are also our friends, -

Q. Sure.

A. - - who come into my store/ And whenever we meet, we talk about what the kids are doing and so on. I would say the last time was three, four months ago.

Q. That would have been the beginning of the summer, too; wouldn't it?

A. Yes.

Q. With whom did you speak? Can you give us any particular person to whom you spoke?

A. Yes. Names escape me.

Q. Well, if not three or four mohths ago, can you give us any time that you spoke with any person, whose name that you can remember, other than his mother and father, about him?

A. My mind has gone blank on names.

Q. Take your time. Here, I'll ask you another question.

A. Yes.

Q. When you talked about him, to anyof these people whose names you can't remember, you talked about him being a good student?

A. About being - yes. A good student and a good boy. You know, in most conversations now, when you have kids of your own - -

Q. Yes.

A. - - you worry because there is so much - -

Q Delinquency?

A. - - delinquency and what not. Always been

A. (cont'g) rather proud of our kids. My kid is a similar age, who also knows Steve. AndSteve and the others that we know have never been in any difficulties. That they have been good, upstanding kids, and in general, that's all. You don't - we don't record these conversations, you know; mentally, even.

Q. And you didn't speak specifically at these conversations about his reputation for morality, for example?

A. Well, I'd have to say that this was rather in a negative sense. That there was never anything wrong about his morality that was ever discussed.

THE COURT: Then,I take it, that the sum and substance of your testimony is that you never heard anything bad about him?

THE WITNESS: Yes, sir.

MR. MC GINLEY: I have no further questions.

MR. KAPLAN: Thank you, Mr. Mendell. Your Honor, on behalf of the defendants Boyer, Gordon, Schaefer and Vasquez, the defense rests.

MR. MC GINLEY: Against - -

THE COURT: The defense rests with respect to - -

MR. KAPLAN: Boyer, Gordon, Schaefer and Vasquez.

MR. MC GINLEY: Your Honor, the People rest against Boyer, Schaefer and Vasquez, but we have one rebuttal witness - -

THE COURT: May I say that - are there any more witnesses?

MR. SCHIFFER: Your Honor, I was now going to rest on behalf of the remaining defendants.

THE COURT: You are all going to rest?

MR. SCHIFFER: Yes, Your Honor.

THE COURT: Defense rests. Now, Mr. Schiffer - -

MR. SCHIFFER: Your Honor, excuse me. I thought Mr. Mc Guinness said he wanted to call a rebuttal witness.

THE COURT: The attorney Schiffer rests in behalf of - -

MR. SCHIFFER: Defendants Cannon, Freedman, Kalb and Gonzalez Rodriquez.

THE COURT: How many of the defendants

THE COURT: (cont'g) did we hear? We heard Gordon and we heard Freedman; is that correct?

MR. SCHIFFER: That's right, Your Honor.

MR. MC GINLEY: Your Honor, the People hav one witness to call. I spoke to him this morning on the phone. He was coming in - he is the officer - at 11 o'clock to his office, and would come right here. He is being called now on the phone to see that he is on his way.

MR. KAPLAN: That's a policeman?

MR. MC GINLEY: Yes; Sgt. Levine. I apologize. Well, his testimony, of course - he is being called to rebut testimony given by Gordon, Your Honor, for that one particular witness, and I don't think that it is testimony that counsel would stipulate to, since this should be a direct conflict to the credibility on that point.

THE COURT: I recognize the fact that the defense has ended its case much

THE COURT: (cont'g) earlier than I anticipated - -

MR. MC GINLEY: And I.

THE COURT: I thought that last night it was indicated there was going to be six additional witnesses.

MR. KAPLAN: Your Honor, tactically, things change from hour to hour.

MR. SCHIFFER: Your Honor, we want to avoid repetitious testimony.

THE COURT: Gentlemen, I welcome your cooperation and I know you are doing your utmost to cooperate and help this Court along, to see that we do not dally and tarry on this case, without wasting time, and I know you ar e doing everything you can. You have cooperated this morning, as a result of which we all must admit, I believe, that it ended much sooner than any of us anticipated that it was going to end.

MR. SCHIFFER: Yes, Your Honor.

THE COURT: As I understood it last night, it was going to be Mr. Gordon, Mr. Cannon; there was to be three characteror

THE COURT: (cont'g) or four character witnesses and - -

MR. MC GINLEY: A rebuttal witness.

THE COURT: - - totalling six witnesses. We have just had two and you have rested; so we are going to have another. You do your utmost to get him here and in the meantime - -

MR. KAPLAN: Your Honor, may I approach the bench?

THE COURT: - - in the meantime I would take a recess. Yes, gentlemen.

COURT OFFICER: Five minute recess.

(AFTER COURT WAS RE-CONVENED, THE FOLLOWING TESTIMONY ENSUED.)

THE COURT: Proceed.

MR. KAPLAN: Your Honor, on behalf of the defendants Boyer, Gordon, Schaefer and Vasquez, I respectfully move to vacate my prior application for resting the case. As to those defendants, I ask permission to re-open only as to character witnesses are concerned.

THE COURT: Do you wish to re-open

THE COURT: (cont'g) also, Mr. Schiffer?

MR. SCHIFFER: Yes, Your Honor; for the same purpose.

THE COURT: All right; case is re-opened on behalf of all defendants.

MR. KAPLAN: Mrs. Simpson.

* * *

MARCELLA SIMPSON, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAPLAN:

COURT OFFICER: What is your full name?

THE WITNESS: Marcella Simpson.

THE COURT: Where do you reside?

THE WITNESS: Five King Street.

THE COURT: K I N G?

THE WITNESS: Yes.

THE COURT: New York City?

THE WITNESS: Croton-on-Hudson.

THE COURT: Proceed.

Q. Mrs. Simpson, may I ask you what is your occupation?

A. Well, I'm retired.

Q. Retired from what?

A. Well, I live on an income that I inherited from my parents.

Q. Mrs. Simpson, do you know the defendant Mr. Boyer?

A. I do.

Q. Would you tell the Court how long you have known him?

A. 14 years.

Q. Do you know people who know the defendant, too?

A. Yes, indeed.

Q. Do you have mutual friends and acquaintences; is that right?

A, Yes.

Q Would you tell the Court, please, the defendant's reputation for integrity and honestyand decency?

A. It's very fine.

Q. Thank you.

THE COURT: Strike it out, unless you refer to these traits not of her own knowledge but in the community.

MR. KAPLAN: Yes, Your Honor.

Q. His reputation as to these traits in the community.

A. It's high.

Q. Have you ever heard any thing derogatory about him?

A. No.

Q Anything bad?

A. No.

MR. KAPLAN: Thank you, Mrs. Simpson.

CROSS-EXAMINATION
BY MR. MC GINLEY:

Q. You are a friend of Alexander Boyer?

A. Yes.

Q. Friend of him family?

A. Yes.

Q. How long have you known him, did you say?

A. 14 years.

Q. Were you subpoenaed here or did you come as a friend?

A. I came as a friend.

Q. When was the last time you spoke to any of these mutual friends concerning Alexander Boyer?

A. Yesterday. I spoke to my neighbor across the street, who is also a neighbor of the Boyers, and their name is Mrs. -

A. (cont'g) well, it's Mrs. Stein, and her husband is an architect and we talked about him, and they said - Mrs. Stein said - -

Q. Don't tell us what anyone specifically said.

A. All right.

Q. If I may ask you this - -

MR. KAPLAN: Your Honor, I think that is in response to the question. The defendant is answering.

THE COURT: The answer was a direct one, and she merely might have said I spoke to such and such a person. There is no question as to what was - what did you say to one another or what did she say to you. You can ask that on re-direct.

MR. KAPLAN: Thank you, Your Honor.

Q What was the occasion to - of speaking about Mr. Boyer just yesterday or the day before?

A. Because I was coming in to - offered to be a character witness for him.

Q And did you speak specifically about his reputation for integrity?

A Yes.

Q. And his reputation for decency?

A. Well, decency - not - the word wasn't mentioned.

Q What word was mentioned?

A. Principle.

Q. That he was a man of principle?

A. Yes.

Q. Was that Mrs. Stein's opinion of him?

A. Yes.

Q. And that is your opinion of him?

A. Yes.

Q. You don't know the reputation thathe has in the whole community? What many other people think about him, do you?

A. I don't know what people that I don't know think about him.

Q Yes.

A. But I know quite a number of parents; parents of his friends.

Q. Yes.

A. And they would concur in this, that he is a person of principle.

Q. When did you speak to any of those people about his reputation, more specifically?

A. Also, yesterday. I spoke to Mrs. Lubell and

A. (cont'g) I'll tell you why I just happened to talk - -

THE COURT: Just answer the question. Just be responsive.

THE WITNESS: All right.

Q. You spoke to Mrs. Lubell and Mrs. Stein yesterday about him?

A. Yes.

Q And did you speak specifically about his reputation for decency with Mrs. Lubel?

A Decency?

Q. The reason I ask you about that is that when counsel asked you had you discussed his reputation in the community for integrity and for decency, you said"Yes"?

MR. KAPLAN: Your Honor, I asked what his reputatinn was for those traits.

MR. MC GINLEY: And I assume to gain such knowledge she would have to discuss it.

THE WITNESS: I didn't go into that yesterday.

Q. Did you go into integrity yesterday?

A. Yes.

Q. How about honor?

A. Isn't that the same thing? I think it's the same thing.

MR. MC GINLEY: I have no further questions.

MR. KAPLAN: No further questions. Mr. Colman, please.

* * *

MORRIS COLMAN, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAPLAN:

COURT OFFICER: State your name?

THE WITNESS: Morris Colman.

COURT OFFICER: Your address?

THE WITNESS: Twelve Michaels Lane, Croton-on-Hudson, New York.

COURT OFFICER: Business or occupation?

THE WITNESS: Art Director.

Q. Mr. Colman, an art director at where?

A. The Viking Press.

Q. Do you know Alexander Boyer?

A. Yes.

Q. Do you know what he does presently?

A. He is a student.

Q. Student where?

A. N. Y. U.; law, I believe.

Q. Would you tell the Court, Mr. Colman, how long you have known Mr. Boyer?

A. About 15 years.

Q. Do youknow people who know Mr. Boyer?

A. Yes, I know many. My children went to school with him.

Q. And then, I assume, you mean that you have many mutual acquaintences?

A. Many mutual friends.

Q. Do you know the defendant's reputation among these people you speak of?

A. Yes, I do.

Q. Would you tell the Court, if you know, what the defendant's reputation for principle and decency and honorability is?

A. May I put it this way. Croton-on-Hudson village - -

THE COURT: Answer the question.

Q. What is his reputation, if you know, as to these traits?

A. Reputation is excellent.

Q. In all the years that you have known him, have

Q. (cont'g) you ever heard anything derogatory about him?

A. NO.

MR. KAPLAN: Thank you.

CROSS-EXAMINATION
BY MR. MC GINLEY:

Q. You haven't been in touch with Alexander Boyer for a couple of years; have you?

A. Oh, yes, I have. He is up in Crotonevery so often; visits my home and I have seen him at his own home.

Q. When was the last time he visited your home?

A. About a week ago.

Q. Did he ask you to be a character witness for him?

A. He did.

Q. Andyou are here today as a result of that?

A. Yes.

Q. When did you last speak to anyone specifically about Mr. Boyer?

A. Well, I did so yesterday, with my wife, and with my wife's employer, also a neighbor, whose name is Lester Davis.

Q. You and your wife and Mr. Davis spoke about him yesterday?

A. Yes.

Q. Mr. Davis knows him?

A. Yes.

Q. When, before yesterday, did you speak to anyone about him, about his reputation?

A. One doesn't go around talking about people's reputation.

Q. I didn't think they did either.

A. If there were anything derogatory, I know so many people who know him, we would know. Know his parents, knowmany of each others children, talk about him continually.

Q. The gist of it is that you have never heard anything bad about him.

A. Right.

MR. MC GINLEY: No further questions.

MR. KAPLAN: No further questions. With the permission of the Court and on stipulation by the District Attorney, may I have a couple of witnesses on behalf of the defendant Cannon, who Mr. Schiffer represents?

MR. SCHIFFER: I defer to Mr. Kaplan.

MR. KAPLAN: Character witnesses on behalf of Mr. Cannon.

DONALD PAPPENFORT, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAPLAN:

THE COURT: What is your full name?

THE WITNESS: Donald Pappenfort.

THE COURT: Where do you reside?

THE WITNESS: 460 West 24th St., New York.

THE COURT: What is your business or occupation?

THE WITNESS: I am a research scientist, School of Social Work, Columbia University; also social research, Mobilization for Youth for the East side.

Q. Mr. Pappenfort - by the way, what is the Mobilization for Youth mean? Would youdescribe it just a little?

A. It's the first federal demonstration project that attempts to reduce delinquency in that area.

Q. When you say "that area", you refer to what area?

A. The loer east side of Manhattan.

Q. Areyou a holder of a doctorate in philosophy?

A. Yes, from the University of Chicago.

Q. I believe you are connected with Columbia University?

A. Yes.

Q In what capacity?

A. Research scientist. I'm on the faculty.

Q. Do you know the defendant, George Cannon ? The gentleman sitting on the end, in the second row?

A. Yes.

Q. How long have you known him?

A. Nearly two years.

Q. You and Mr. Cannon have mutual friends?

A. Yes, I know many.

Q. Now, among these people, these mutual acquaintences, do you know - may I continue, Your Honor?

THE COURT: Yes.

Q. do you know the reputation, among these mutual friends, circle of friends, of Mr. Cannon?

MR. MC GINLEY: Your Honor, I object to the question. I think there is an underlying question that has not been asked: whether he discussed it with anyone.

MR. KAPLAN: I can ask the - -

THE COURT: He doesn't have to ask it in that order.

MR. KAPLAN: I don't have to ask it. If he knows the reputation, that's all that's required.

THE COURT: Go ahead.

Q. Do you know the reputation of the defendant Cannon?

A. Yes, I do.

Q. Would you tell the Court, if you knew, the reputation of the defendant Cannon, specificall as to the traits of integrity, principle, honorability and decency? What is his reputation, if you know?

A. It's excellent.

Q. Have you ever heard anything derogatory or bad about Mr. Cannon?

A. No.

MR. KAPLAN: That's all.

CROSS-EXAMINATION
BY MR. MC GINLEY:

Q. You have known Mr. Cannon for three years?

A. Yes.

Q. Have you known him from the lower east side?

A. No. We live in the same apartment house.

Q. When was the last time you spoke to anyone concerning him?

A. Since the trial began.

Q. When was that?

A. Specifically, last weekend.

Q. Did he ask you to come here as a character witness?

A. No; his lawyer did.

Q. And with whom did you speak concerning his reputation?

A. A colleague on my research project.

Q. A colleague on the research project?

A. A colleague on the research project.

Q. Does this colleague know him?

A. Yes.

Q. This colleague, you would call a friend of Mr. Cannon's, would you not?

A. Yes.

Q. Did you ever discuss his reputation with anyone else besides that particular individual?

A. Yes; a woman neighbor, Margaret Sams.

Q. When was that?

A. Last Thursday, I believe, or Friday; Friday.

Q. And did you actually discuss hisreputation for honor and principle?

A. Yes; because I think of the fact of the trial itself; because this had to be discussed.

MR. MC GINLEY: I have no further questions, Your Honor.

MR. KAPLAN: No further questions, Your Honor. Call Mr. Rosenberg.

* * *

MRRSHALL L. ROSENBERG, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAPLAN:

THE COURT: What isyour full name?

THE WITNESS: It's Marshall L. Rosenberg.

THE COURT: Your address?

THE WITNESS: 6536 168th Street, Flushing.

THE COURT: Your business or occupation?

THE WITNESS: I'm an attorney.

Q. Mr. Rosenberg, for how long have you practiced law?

A. For approximately eleven years.

Q. Do you know the defendant, Mr. George Cannon?

A. Yes, I do.

Q. For how long have you knownhim?

A Approximately three and half yearsto four years.

Q. Now, Mr. Rosenberg, were you sitting in the court when I directed my questions to Mr. Pappenfort?

A. Yes.

Q. If I were to ask you the same questions, would your answers be substantially the same?

MR. MC GINLEY: Objection.

THE COURT: Sustained.

Q. Mr. Rosenberg, do you know - you say you have knownMr. Cannon for how long?

A. Approximately 3½ or four years.

Q. And during that time, have you known other people who know Mr. Cannon?

A. Yes, I have.

Q. You have had mutual acquaintences, mutual friends?

A. Yes, we have.

Q. Do you know Mr. Cannon's reputation in this community of friends we are speaking of? Do you know his

Q. (cont'g) reputation?

A. In general, I do.

Q. Specifically, would you tell the Court what his reputation is for decency, integrity, honorability and principle?

A. For all these characteristics, very good indeed.

Q. Have you heard anything bad about him?

A. No.

MR. KAPLAN: No further questions.

CROSS-EXAMINATION
BY MR. MC GINLEY:

Q. In what capacity have you known Mr. Cannon?

A. As a friend.

Q. Do you live in the same house with him?

A. No.

Q. Live in the same area?

A. No, I do not.

Q How did you come to know him?

A. I knew his wife previously and I was introduced to him through his wife.

Q. When did you last speak to anyone about his reputation?

A. Oh, I have had - I don't speak about his reputation.

Q. You don't?

A. No.

Q. What do you speak about?

A. About these various characteristics that I was asked about.

Q. You mean you spoke to people about principle, about honor?

A. About things that Mr. Cannon has said or done.

Q. I'm sorry.

A. I speak to pepple about things that Mr. Cannon has said or done.

Q. That Mr. Cannon has said or done?

A. Yes.

Q. When last did you speak to anyone about anything Mr. Cannon has said or done?

A I have had frequent occasions in the past week or so to speak about Mr. Cannon to various people.

Q. Was that because of this case?

A. Yes.

Q. How about before this case began? Going back till the middle of August, when at that time or before did you discuss Mr. Cannon with anyone?

A. OH, from time to time I would speak to our mutual friends and acquaintances about various things that

A. (cont'g) George was doing on a particular occasion.

Q. Can you give me a particular occasion in which you speke to various friends and friends - and to which friends you spoke?

A. Yes. I remember an occasion - I think it was last winter - when Mr. Cannon had some problem in connection with his employment. It was a question of his own integrity and honesty was involved in it, and I spoke about that problem with a number of his friends and acquaintences.

Q. Who were some of these people with whom you spoke?

A. Well, there were some people in my office, who were also acquaintences of Mr. Cannon's.

Q. Who are they?

A. There is a Mr. Elias Lieberman; Isidore Katz; Miss Rose Nailor. Ialso spoke to some people outside the office about it.

Q. Are you here today, Mr. Rosenberg, as a result of a subpoena?

A No, sir; I am not.

Q. Did Mr. Cannon askyou to come?

A. No, he did not.

Q. Did his attorney?

A. No, he did not.

Q. How did you know to come?

A. His wife asked me.

MR. MC GINLEY: I have no further questions.

MR. KAPLAN: No further questions. Your Honor, may it please the Court, on behalf of the defendants Boyer, Gordon, Schaeffer and Vasquez, the defense respectfully rests.

THE COURT: Mr. Schiffer?

MR. SCHIFFER: On behalf of the defendants Cannon, Freedman, Kalb and Rodriquez Gonzales, the defense respectfully rests.

MR. MC GINLEY: People have one rebuttal witness, Sgt. Levine.

DIRECT EXAMINATION
BY MR. MC GINLEY:

SGT. ADOLPH LEVINE, having first been duly sworn, testified as follows:

THE COURT: State your name, shield number and assignment.

THE WITNESS: Sgt. Adolph Levine,

THE WITNESS: (cont'g) shield # 1564, Safety Unit A.

THE COURT: What precinct?

THE WITNESS: Safety Unit A.

Q. Were you on duty on the 21st of August 163?

A Yes, I was.

Q Did you on that day see the defendant, Stephen Gordon?

A. Yes.

Q. When, for the first time on that day, did you see him?

A. In front of 155 Allen Street.

Q Do you see that defendant in the courtrOom now?

A. Right there, leaning forward, with the glasses.

MR. MC GINLEY: Indicating the defendant Gordon.

Q. You first saw him in Allen St.?

A Yes.

Q. What did you see him do at Allen St.; if anything?

A. He was standing on the curb, alongside a truck.

THE COURT: Have you fixed a time?

MR. MC GINLEY: I believe he said

AMR. MC GINLEY: (cont'g) 1:55.

Q. Did you say that?

A. No. It's about 1:35 P. M.

MR. MC GINLEY: I'm sorry; 1:35.

A. 1:35 P. M.

Q. Did yousee a truck?

A. Yes.

Q At Allen St.?

A. Yes.

Q. I show you People's Exhibit number 1; is that the truck depicted in that photograph?

A. Yes, it is.

MR. KAPLAN: Your Honor, for the record, may I object; the rebutaal is going far beyond the limit of the cross. There was no mention of Allen St. That's beyond the limits of cross-examination.

THE COURT: Over-ruled.

MR. KAPLAN: Respectfully except, Your Honor.

Q. Now, what, if anything, did you see him do at Allen St.?

A. He was standing at the curb, while I was conversing with Mr. Gennon.

Q. The defendant Gordon, did you see him get into the truck at any time?

A. No, I did not.

Q. When did you see him again?

A. At City Hall, on the roadway, the Park Row roadway that runs round in front of City Hall, alongside of it.

Q What, if anything, did you see him do there?

A. He was standing in a roadway and - he was just standing there looking at the ground, where there was a pile of debris, and another defendant, who was present in the court, was lying in the roadway.

MR. KAPLAN: I object. It's not responsiveto the question.

THE COURT: Sustained.

Q. Who was the other defendant?

A. The other defendant is sitting behind counsel here, with his hand on his left cheek.

THE COURT: Indicating Schaefer?

THE WITNESS: Yes.

THE COURT: Defendant Schaefer.

Q. Schaefer was lying on the roadway?

A. Yes, on his back, prone.

Q. Now, was any order directed to Gordon while he

Q (cont'g) was standing in the position you have just described?

A. There was some shouting. I don't know who directly said anything, but they were ordered to disperse.

MR. KAPLAN: I object, Your Honor.

THE COURT: Sustained.

Q. Did you give any particular order to Gordon while he was standing in the roadway?

A. Yes; I removed him fromthe - -

MR. KAPLAN: I object, Your Honor. I'ts not responsive.

THE COURT: Sustained. Did you give him any order? Did you say anything to him?

THE WITNESS: Yes. I said "move along", and I grabbed him and put him in the back of a police car.

Q. Did he stay in that police car?

A. Yes, he did.

Q. Did there come a time when he left that police car?

A. Yes, there was.

Q. Would you tell us about that?

A. When Concannon - when Mr. Cannon was taken to the police car, I removed him and at that time a vehicle was available to remove the defendants to the Fifth Precinct stationhouse.

Q. Do you know where Gordon went when he got out of your car?

A. No, I do not.

Q. And while Gordon was standing in the roadway with the debris on the ground, were there any other people around? Around the truck, that is.

A. Yes, there was quite a few people; police officers and civilians.

Q. Were they doing anything?

A. There was a group that were holding each other about - -

Q. And when Gordon was placed under arrest, where was he? Was he in the roadway; on the sidewalk?

A. He was in the roadway, alongside of the truck.

THE COURT: Alongside what?

THE WITNESS: Alongside the truck, in the roadway.

Q. Did he make any response when he was told to move on?

~~A. No, he didn't.~~

THE COURT: Did he move on?

THE WITNESS: No, he did not. He seemed transfixed to the spot.

Q. Transfixed what?

A. To the spot where he was standing. He was just motionless; just standing there, didn't move at all, remained there.

MR. MC GINLEY: I have no further questionsof the sergeant.

CROSS-EXAMINATION
BY MR. KAPLAN:

Q. Officer, going back to Allen St., you were in an unmarked car; is that right?

A. That's correct.

Q. There came a time when you were in the vicinity or in company of a truck on Allen St.; is that right?

A. Yes, there was.

Q. There came a further time that you had occasion to talk to Cannon, as you testified; is that right?

A. Yes, there was.

Q. Did you tell Cannon that you were going to follow him down to - you were behind - would be behind him, wherever the truck goes, you will go?

MR. MC GINLEY: Objection, Your Honor.

THE COURT: I'll take it.

MR. MC GINLEY: I object to it because counsel objected to my going beyond anything along - -

THE COURT: I made my ruling; proceed.

A Yes, I spoke to Cannon.

Q. Now, did you say to him that you will accompany him on the trip down?

A. I said I would follow him.

Q. Did you tell him to obey - this is in substance, of course; this is not verbatime. Did you tell him - -

THE COURT: Is this in dispute?

MR. KAPLAN: I won't pursue it.

Q; Speaking of the occasion at City Hall Plaza, you say you saw Gordon; is that right?

A. That's correct.

Q. And Gordon was where, in relation to the truck; if you remember?

A. Standing in the roadway on the right hand side of the truck; the passenger side of the truck.

THE COURT: In therear of the truck? Did you say "in the rear" or "to the rear"?

THE WITNESS: To the rear of the

THE WITNESS: (cont'g) truck, on the passenger side.

THE COURT: Which would be the right side to the rear.

Q I show you People's Exhibit 3. Are you familiar with that event which that photograph depicts?

A. Yes.

Q. You see Gordon there?

A. No, I do not.

Q. Was Gordon there?

A. No, hewas not in this scene.

Q. If you know, was there any time that Gordon had his arms around any other defendants in the area of the truck; if you know?

A. Ido not know.

Q. Well, you were there how long? From the time the incident occurred until it ended?

A. Until the time it ended.

Q. Did you see Gordon with his arm around anybody?

A. No, I did not.

THE COURT: What exhibit is that?

MR. KAPLAN: That's People's 3, Your Honor.

Q. Did you see Gordon on the street at all, prone, lying down?

A. Not prone.

Q. I beg your pardon?

A. I didn't see him prone. I saw him on the street.

Q. There came a time when you approached Gordon; is that right?

A. That's right.

Q. And you said to him, "You're under arrest"?

A. That's right.

MR. MC GINLEY: Objection, Your Honor.

MR. KAPLAN: I asked him if it's right.

MR. MC GINLEY: It's just not the testimony.

MR. KAPLAN: I didn't repeat the testimony. I merely asked him if it was correct.

THE WITNESS: He was taken into - -

THE COURT: Don't answer until you are given permission by the Court. Don't argue with either of the attorneys. Objection is sustained. Re-frame your question.

Q. Did there come a time when you approached the defendant Gordon?

A. Yes.

Q. And I'm speaking specifically of the occasion when you were both near the truck; is that right?

A. Yes, sir.

Q. Now, how far from Gordon were you standing, prior to approaching him?

A. I was seated in a police car, about 12 feet.

Q. And you got out of the car?

A. I dismounted.

Q. I beg your pardon?

A. I dismounted from the car.

Q. You dismounted from the car?

A. Yes.

Q. And you walked over to Gordon; is that right?

A. I moved a little faster than a walk.

Q. You ran over to Gordon?

A. Yes.

Q. How long did it take from the time you got out of the car until the time you got to Gordon?

A. About three or four seconds.

Q. Was Gordon emptying or taking out any debris from the truck at this time?

A. He was not taking anything out of the truck.

Q How far from the truck was he?

A. Three feet.

Q. All right. There came a time when you approached Gordon?

A. Yes.

Q. What didyou say?

A. I don't remember my exact words.

Q. All right. In substance, what did you say?

A. I said to Gordon, "Come with me", and I directed a police officer to remove Schaefer from the roadway.

Q. Just answer the question, please.

A. I said to Gordon, "Come with me".

Q. Did he go with you?

A. Yes.

Q. And you put him in the car?

A. Yes.

Q. And that's where he stayed?

A. Right.

MR. KAPLAN: No further questions.

RE-DIRECT EXAMINATION
BY MR. MC GINLEY:

Q. Did I understand you to say that you also told Gordon to move before you placed him under arrest?

A. Yes, I did.

MR. MC GINLEY: That's all, Your Honor. Sergeant, you can step down.

MR. KAPLAN: Just a moment, please.

RE-CROSS EXAMINATION
BY MR. KAPLAN:

Q. Sergeant, just one more question. You ordered Gordon's arrest, sergeant? Did you order Gordon to be arrested?

A. I can't recall whether I did, except that I removed - I don't recall ordering his arrest.

Q. Do you know who arrested Gordon?

MR. MC GINLEY: Objection, Your Honor. We all know who arrested Gordon. He testified on the stand and - -

THE COURT: Tell him again.

Q. Do you know who arrested Gordon?

A. The patrolman in the radio car from the Fifth Precinct. I don't remember his name.

MR. KAPLAN: I have no further questions.

MR. MC GINLEY: All right, sergeant, step down. The People have no further witnesses and rest against all the defendants.

THE COURT: Each side now rests; motion

MR. SCHIFFER: Your Honor, on behalf of the defendants, Cannon, Freedman, Kalb and nzalez Rodriquez, I move to dismiss on the ground that the People have failed to prove their guilt beyond a reasonable doubt.

MR. KAPLAN: Your Honor, similar motion on behalf of the other four defendants. And may the remarks of Mr. Schaffer, as counsel for the other defendants, be incorporated in the record as though they were mine, also.

THE COURT: Both motions are made on the ground that the People have failed to prove the defendants guilty beyond a reasonable doubt.

MR. KAPLAN: Yes, Your Honor.

MR. SCHIFFER: Your Honor, may the defendants be seated while I make my remarks?

THE COURT: Yes.

MR. SCHIFFER: I think that Your Honor might dispose of Mr. Gordon in the first instance, since his is plainly a simple matter. There is no testimony in the record whatsoever as to the commission of any offense by him. The officer who arrested him clearly mis-identified him; clearly thought that he

MR. SCHIFFER: (cont'g) was arresting someone else for conduct which this defendant could not have committed, because he was then in a police car where Sgt. Levine placed him. I think anything else as to the defendant Gordon is purely repetitious and redundent. As to the defendants - -

THE COURT: I might point out that Gordon is the only one who has been charged in each one of these offenses.

MR. KAPLAN: I beg your pardon?

THE COURT: I'm sorry; excuse me. Hold it a moment.

MR. KAPLAN: Gordon is charged with Subdivisions 2 and 3.

THE COURT: 2 and 4.

MR. MC GINLEY: 2 and 3.

THE COURT: Just a minute. Just hold it a minute. All right, he is charged with 2 and 4.

MR. MC GINLEY: Who is that, Gordon?

MR. SCHIFFER: Gordon is 2 and 3, Your Honor.

MR. KAPLAN: 2 and 3, Your Honor.

THE COURT: Quite correct; 2 and 3. You may proceed.

MR. SCHIFFER: There is absolutely not proof

MR. SCHIFFER: (cont'g) then, in the case of the defendant Gordon, who is charged with the offense under the testimony of Patrolman Dillingham. Now, Patrolman Dillingham identified him and tied him to a group activity in People's Exhibit 3, and Sgt. Levine, among other witnesses, has unequivocally stated that the image marked in that picture is not Gordon; since he was arrested by Dillingham for the charge of committing that set of acts which are depicted in that photograph, there just isn't any case. On rebuttal, the People brought Sgt. Levine. Sgt. Levine testified that he said something abOut moving on to Gordon, but that he saw Gordon standing there transfixed, staring at the ground, in approximately the same position as the position which the defendant Gordon previously testified he was in, at approximately that time. There is no explanation given why Sgt. Levine would, in his own terms, go more rapidly than a walk from the police car to remove a single person whom he saw standing stockstill, fixedly staring at the ground, three feet from-away from the truck, occasioning a reasonable doubt that the defendant Gordon heard Sgt. Levine say anything; and the fact of the matter is that Mr. Gordon testified that he didn't hear anything being said of that kind. He said he was taken and arrested at that point, not understanding what further thing was being charged or anything of that kind; so I say as to

MR. SCHIFFER: (cont'g) Gordon, there is simply nothing at all. Now, as to Cannon, we have the situation - and I do not wish to repeat, Your Honor, except where absolutely necessary my remarks on the motion to dismiss at the close of the People's case - Cannon is shown to have driven a truck. This truck did not contain any garbage, according to the facts in the record. It contained - garbage being defined by the dictionary as vegetable and animal refuse. And nobody said anything in this Court that such materials - the material in the truck was described by several witnesses. Nor is there any evidence that the defendant was paid. In fact, the evidence is to the contrary, that he was not paid, nor was he expecting to be paid; so that he wasn't carting garbage, and in addition to that we have the testimony, now confirmed by Sgt. Levine, shows a series of policemen saw this truck being loaded at all times; spoke to Mr. Cannon at various points. He was at all times peaceable. They didn't charge him with any offense. They didn't say he was doing anything wrong. But when he got down to City Hall, a policeman stepped off the curb and stopped him. This policeman, Your Honor, testified, being Mr. Houston, testified, among other things, that he was ordered to give Mr. Cannon a ticket a half hour before Mr. Cannon got there. In addition to that, Mr. Houston - and I here refer to the record, at Page 75 - -

THE COURT: I recall the testimony very clearly. As a matter of fact, he said Sgt. Olmstead gave him the order that if certain things happened he was to give him a ticket.

MR. SCHIFFER: Thank you, Your Honor. A half hour beforehand. And in addition, he was ordered to give him a second ticket, and he took Mr. Cannon to the station to give him the second ticket which he had been ordered to give him. He gave him a ticket for carting garbage, although he could not see into the truck.

THE COURT: That's not before us. The tickets were given.

MR. SCHIFFER: The point is, Your Honor, that this bears on the very simple central issue of this case, that this whole incident was a pre-arrangment of the police. This whole incident occurred for only one reason, in the manner in which it occurred. The defendants did not intend to go where they ended. The police moved them into that position. The defendants did not intend to dump garbage. They intended to unload a portion of the contents of the truck and carry it to Commissioner Byrnes. According to our offer of proof, there was ample reason to suggest on this issue of intent, that they had reason to go to the office of Commissioner Byrnes and Deputy Commissioner Gresbit. That they had had previous

MR. SCHIFFER: (cont'g) conversations with these gentlemen - -

MR. MC GINLEY: Your Honor, I dislike interrupting a summation but I must object to statements containing these defendants' intentions. They are not before the Court and to allow matters that have been excluded by the Court, I don't think that they have a proper place in a closing argument.

THE COURT: I will allow counsel latitude in developing his argument. He may wish to connect it with something. I'm not going to curb him.

MR. SCHIFFER: I do not wish to presume on the time of the Court, but the fact is that these people testified to a consistent plan, which was lawful and peaceful in character. The policemen at various points confirmed that they were acting in accordance with that peaceful and lawful plan for a lawful purpose, and that policemen were watching on the entire stretch of road, from at least Reid or Duane Street, southward towards City Hall. The testimony further is that there were numerous policemen in the area; that this truck was anticipated by hours; that the whole demonstration in front of City Hall must have been observed by a number of policemen; and that that demonstration was not the basis of any charges. That demonstration took place and continued. That it was the truck the police were waiting for and it was the truck that

MR. SCHIFFER: (cont'g) was surrounded by police. It is most interesting to note that one of the People's witnesses, in all good faith, testified that he was staring at the place where thh truck pulled in and saw either no policemen or one or two policemen. Moments after that truck - moments after the point of that testimony, that truck was surrounded by policemen. In that one photograph, there are eleven policemen, as Your Honor counted. And there are other policemen, because some of the people later testified that they are not in the group. Patrolman Houston similarly could not recall the number of policemen or any police in various positions immediately around City Hall Park, and immediately relevent to the stopping place Patrolman Houston couldn't remember it, but they were there,because they were there instants, seconds afterwards. The sequence of time, from the point where Patrolmen Houston stopped the truck to the point where all these people were arrested was no more than five or six minutes by anybody's testimony. The sole exception was Cannon, and Cannon was not arrested until several hours later when he was at the station, voluntarily, waiting for the release of the truck. Excuse me. I don't know if that last statement is in the record. He was voluntarily at the station, and that is in the record. He was then arrested on a charge of having

MR. SCHIFFER: (cont'g) violated a statute, which had been repealed five years earlier. Now, Your Honor, with all due respect to the amendment of the complaint - and the amendment we have excepted to that - the point is that he was clearly wrongfully arrested at that point. He shouldn't be here at all. Furthermore, there was nothing disorderly in his conduct in any sense. Did he do anything which was in any fashion disorderly within the concept of the statute? So Patrolman Houston testified. The rapidity of the police action in surrounding and quelling this truck is clearly inconsistent with the burden of proof, which the People bear, as to the defendants. As to the 1220 charges and as to the disorderly conduct charge, there must be shown an intent, not merely the unloading of the truck - because after all, what the defendants were doing was unloading the truck at a place designated by the police, and surrounded by the police - but an intention to abandon the material unloaded.--

THE COURT: Counsellor, I don't frankly follow your argument when you say that the defendants unloaded their truck at a place designated by the police. There is nothing in this record that - unless I am mistaken, and that's why I am pausing a moment, to be corrected, if I am wrong. There is nothing in this record, that I heard, in which anybody gave them any directions to unload, if we can use that word.

THE COURT: (cont'g) If I am mistaken about that, I wish you to please correct me.

MR. SCHIFFER: Your Honor is not mistaken. What I meant was that they were directed to the spot and the unloading of the truck in a spot designated by the police for them to act is not unlawful. It is well known that a truck has a right to stop and unload. As the police said to stop in that place and that's where it was unloaded, then there is nothing inherently unlawful about their unloading the truck.

THE COURT: In other words, as I understand your argument now, it was the police who stopped them at a certain spot; it was the defendants who decided to unload at that spot. I could not connect the stopping and the unloading, unless I'm wrong. The unloadig is something that the defendants did on their own, and the stopping was something the police did. But I do not find authority or direction for unloading, merely by the fact that they were stopped by the police, and they were directed to the curb or to a certain spot. If I'm wrong about that, I wish you to develop it and correct me.

MR. SCHIFFER: Well, it's clear, at this point, that the movement of the truck was consistent with the intention of turning left at Spruce St., in the place so directly described in the record. It's also clear - -

THE COURT: I donot find that either, counsellor.

MR. SCHIFFER: Your Honor, the testimony is that there was a left turn blinker at this - as the truck proceeded. The truck was on the leftward side of the road. That there was other traffic probably emerging from the Brooklyn side, as shown - -

THE COURT: Yes, I understand.

MR. SCHIFFER: That consequently the truck was edging into the left lane when it was stopped. That the traffic was proceeding slowly. There seems to be a conflict as to whether the truck had stopped, as Patrolman Houston says, or whether it was still moving and he stopped it. The point is that it was at that point, when it was trying to move towards that break at Spruce St., that Patrolman Houston directed it to pull in to City Hall Plaza. Now, is there anything that I have said here - -

THE COURT: You have developed your argument, counsellor

MR. SCHIFFER: The evidence is clear,Your Honor, to my mind, that, for example, I think the point should be made that the defendants had no opportunity to remove the material that had been unloaded. The material is described as of such character that the word "throwing" simply isn't applicable. It's heavy stuff. Now, the evidence is also clear that the person or persons who attempted to open the side door were pulled away from it immediately by policemen, whether or not

MR. SCHIFFER: (cont'g) they were technically arrested. Therefore, the unloading over the side of the truck remains consistent and it remains an orderly act, Unless the People could meet the burden to prove that that material was to be abandoned, they cannot prove this case in any aspect. Now, the complete absence of proof - Of such proof, the impossibility of such proof, arises from the sequence of events described by each of the defendants who testified, and by other witnesses; in that they were arrested, surrounded, and retained in police control almost instantly the truck stopped. As I say, the total instance was a matter of six minutes. They did not have the opportunity to pick up and remove the material as they intended. As to the traffic situation, to the extent that there is any charge here of blocking traffic, Defendant's Exhibit "D" demonstrates, and the testimony demonstrates, that in that particular spot there is a conjunction of traffic coming southward, and traffic coming from Brooklyn. That ahead, there is on the right a bus stop and to the left, the area where the left lane must turn left, there is obviously an area where thereis a confluence of traffic, which might at any time slow down. Yet the testimony is by no means clear that there was anyt stoppage of traffic. Some witnesses thought there was, momentarily. Others thought there was not. As to the

MR. SCHIFFER: (cont'g) pedestrian traffic, Patrolman Dillingham indicated, among others, that there was no crowd collected. Demonstrators were there beforehand. The demonstrators were not violating any law by being there. Your Honor already ruled to that, I believe. The people were walking by on the sidewalk. There were newspaper men who were there, as Patrolman Dillingham - newspaper men or other kinds of reporters, and newspaper men who arrived after the truck came. There were also a great deal of policemen. There was also a police car parked in the roadway, beyond the white lines, for a considerable period of time, which would in itself cause traffic to be blocked. The truck itself was parked in the spot designated by Patrolman Houston, so that any question as to the stopping of the truck being a cause of traffic delay rests not with Mr. - with any of the defendants but rests with the police. Now, Your Honor, the circumstances of this case, as I indicated in the trial memorandum of law, something went wrong here, something went wrong in that the police thought these people were doing - were going to do something that they had no intention of doing, and they acted on their belief, all in good faith, but they acted on something that was never intended to happen, and which didn't happen. The question that the People have avoided assiduously is how this happened. That is, who gave the orders; who gave the instructions; who

MR. SCHIFFER: (cont'g) who planned it? they are all witnesses available to the People. The inference must be drawn that these witnesses, if called, would testify against the People's contentions in this matter. Why didn't they call Captain Lee or why didn't they call some of these other people? Why didn't they? Now, Captain Licht's statement to the people, according to at least some of the testimony, is that he wanted them to leave the area. That is, to say, Captain Licht wanted these people to abandon the material on the roadway. The testimony of the People is that it was after he told them to leave, to abandon the stuff - he told them to abandon the stuff there, that they were arrested for not abandoning it. So, we have an inconsistency on the charges. One indicates they abandoned the stuff and the other is based on not leaving when they were told to abandon it. There is confusion. Confusion on the part of Licht; confusion on the part of various officers; confusimn in the testimony of the witnesses. Now, Your Honor, as to the law, there is one further point that I might state which was made in the trial memorandum. The People have not charged what they might have charged under the disorderly conduct statute. That is, that the defendants acted with intent to provoke a breach of the peace, or under circumstances whereby a breach

MR. SCHIFFER: (cont'g) of the peace might be occasioned. They have undertaken to prove it by alleging both in the complaint, and that conjunctive binds the People, Your Honor. I say to Your Honor, it is impossible here to prove intent to provoke a breach of the peace, since the defendants clearly were acting with the directly contrary intent. We have tried to show - and some of the testimony has been excluded, other testimony has been permitted - but the fact is we have tried consistently throughout the trial to show what the intent, actual intent of these defendants was, and that intent was to bring this material to the Municipal Building and to exhibit it to Commissioner Gresbit and Byrnes in a peaceful manner, and in accordance with the exercise of their right to petition for address of grievance. Your Honor, to return to the fundamental Edwards case, Edwards vs. South Carolina, which was discussed the other day momentarily, the District Attorney in answering me on the motion to dismiss at the close of the People's case, sought to distinguish it on the grounds of traffic blockage and interference. Now, clearly, the circumstances - this first of all was a matter of dictum in the Edwards case, and secondly, the circumstances of this incident show that the defendants were not responsible for any traffic which might

MR. SCHIFFER: (cont'g) have been delayed or blocked. Certainly they did not intend to block any traffic. They were stopped in a place clearly marked off with white lines, closed to the public. There were signs, several signs, no thoroughfare, police cars only. There was a police barricade there. They followed orders. They did what they were told. Now, as Your Honor has previously pointed out with respect to the defendant Cannon,in particular, the defendant Cannon was simply out of it. The People have attempted to show that this was some conspiracy between him and the others. Mr. Cannon is a professional truckdriver. He agreed to drive the truck. He did exactly what he was told by the police officers who watched him all the way, and I fail to see how he can be blamed for being any part of any conspiracy or any group action or on charges arising out of group action. The defendants, Your Honor, whatever the specific distinctions, are in the sitéation where they acted in pursuance of their intentions, which was a peaceful intention, and the People have consequently failed utterly to make a case. In any event, there is in each bit of testimony in this record reasonable doubt and certainly the People have proved nothing beyond a reasonable doubt, that they were obligated to prove here.

THE COURT: Thank you. You wish to be heard, Mr. Kaplan?

MR. KAPLAN: May the remarks of my co-counsel, Mr. Schiffer, be incorporated as though I had uttered them.

THE COURT: Mr. Mc Ginley.

MR. MC GINLEY: Your Honor, these defendants have engineered a plan in this case, that was conceived with contempt for the law, and executed in direct defiance of the law and of the police who were there at the time. It was a full-scale military operation. They had meetings; they had battle-stations.

MR. SCHIFFER: The "battle stations" were stricken from the record three times, Your Honor.

THE COURT: May I say that, as I said before, that I am a jury as well as a Court, trying this case. Depend upon my good judgment.

MR. SCHIFFER: Yes, Your Honor.

MR. MC GINLEY: Your Honor, everyone had a job. This wasn't a haphazard affair, no ordinary disconduct, where somebody becomes intoxicated and commits an anti-social action. This was a deliberate, intentional, wilful flaunting of the law from its inception to conclusion. A truck was loaded down with garbage - and I use the word "garbage" as concluded from

MR. MC GINLEY: (cont'g) Mr. Freedman, who testified what went into the truck: old brooms, mop handles, large cans, scraps of metal, springs and a large rat. If that isn't garbage, I find it awful hard to conceive what it is. The truck, loaded as it was, proceeded downtown, loaded with garbage, and with vermin. Debris was thrown to the street down there, vehicular traffic was blocked, pedestrian traffic was blocked. In fact, the defendants by choosing a particularly busy location, which admittedly they did choose, can not come into Court and complain that the area was already crowded, and thereby excuse their actions. Then came the chanting and singing, the locking of the arms, the two orders given by the police to stop and move on; the refusal to do so. The statutes that we are faced with really is a simple one, and I won't go into the law here. And in addition, this took place right at the seat of the city government, at the Mayor's office. It is interesting to note that the defendants, from the time this truck left its birth at Ellridge St., saw policemen at every corner, at every turn; saw them when they came into view of the City Municipal Building, but they weren't to be deterred by the fact that the police had cautioned them as to their actions, and were stationed in positions whereby if a breach of the

MR. MC GINLEY: (conn'g) peace occurred they were better able to cope with it. They were intent on dumping garbage at City Hall, and that's what they did. Certainly their intentions are immaterial. Their actions speak for them, since a man is presumed to intend the natural and probable consequences of his acts, and these defendants can be presumed to have intended the resulting violation of Section 1220 of the Vehicle and Traffic Law, and the violation of the disorderly conduct statute. I would say a few words with respect to each, or if not all, at least most of the defendants. With respect to Stephen Gordon, we had Patrolman Dillingham's testimony that Gordon clasped arms with several othess, Schaefer, Boyer, etc., sang and chanted and refused to move on when directed by Captain Licht; and while I come to that name, Captain Licht, used by counsel on his argument, that these were witnesses available to the People and were not called. These witnesses, including Captain Licht, were available to the defendants defense, so much so that counsel for the defense subpoenaed Captain Licht and had him here at least two mornings, talked to him and excuseed him. If Captain Licht could have shed any light on all these proceedings, then counsel should have called him. He certainly had the opportunity. Now, Gordon was pointed out

MR. MC GINLEY: (cont'g) in that picture, People's Exhibit 3, I think it was, as one of the participants. He was described as being there in the flesh and the officer pointed to him in the picture. Now, if that is not him in the picture I don't think that should cast any reflection on the officer's testimony. Sitting here in the courtroom and being told to note various names and also denoting the particular defendants is a different thing than seeing them at that time. Officer Dillingham testified to many things that were in that particular picture. He was asked specifically about the size of the truck; whether there were people to the right and people to the left; and he testified to both of those things. He testified that he saw Gordon and that Gordon had refused to move on when told to do so. Sergeant Levine testified this morning that he saw Gordon at a different location than any location testified to by Patrolman Dillingham. He saw him out on the roadway, where people had gathered and where traffic was blocked. He saw him being ordered to move, and in fact had ordered him to move on, while Schaefer lay prone in the roadway, and was arrested while the debris was still lying there. But Gordon chose to ignore the command and thereby invited arrest. Now, sections under which Gordon are charged, Your Honor; sub-divisions 2 and 3 of the disorderly conduct statute. Sub-division 2 is

MR. MC GINLEY: (cont'g) that the defendant acted so as to annoy, disturb and interfere with - -

MR. KAPLAN: Your Honor, if Mr. Mc Ginley is reciting the statute, could I request that he read it completely. He is reading a particular portion and not the preface, so that Your Honor - -

THE COURT: The Court is very familiar with the statute; the overlying paragraph.

MR. MC GINLEY: And realizing the Court is familiar with the statute, I'm only referring to a particular part that I wish to emphasize, Your Honor.

THE COURT: The Court may not be misunderstood. It may be profitable to review the other paragraph, the preamble: any person with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

MR. KAPLAN: Does Your Honor emphasize - -

THE COURT: Now, I am emphasizing not the word "or" but the following words, "whereby a breach of the peace may be occasioned", even though he doesn't intend to breach the peace; even though he may not have any direct intent to do so. So, the law has two facets or the paragraph has two facets. One, where he intends to; the other where it is occasioned without the direct intention to do so, but follows as a natural consequence of his acts.

MR. KAPLAN: Your Honor is correct, except the complaint, the pleading wherein which we prepare our defense extends conjunctively. It requires the People to do what it says: prove beyond a reasonable doubt not only the first but the second.

MR. MC GINLEY: Mr. Kaplan was offered a chance to speak to the Court. Now he has objecmdto my summation on particular - -

MR. KAPLAN: I'm sorry, Mr. McGinley. I won't object.

THE COURT: Proceed.

MR. MC GINLEY: Gordon is charged with, as Your Honor well knows, Sub-division 2, 722 and sub-division 3, in that he acted in such a manner as to annoy, disburb and interfere with, obstruct and acted to the annoyance of others; and 3, that he congregated with others on the public street and refused to move on when ordered by the police. I cite to the Court the case of People v Galpern, 259 New York 279, case decided in 1932, in which Judge Lehman, writing for a unanimous Court on the conviction of a defendant, was upheld, although the defendant did nothing more than congregate with five or six others on the public sidewalk and refused to move when requested to do so by the arresting officer. He was guilty of disorderly conduct. Gordon was in on the plan from the inception. He was seen at Ellridge St. He rode on the

MR. MC GINLEY: (cont'g) truck all the way down. He was part and parcel of it. His actions, perhaps, not as pronounced or not as profound as the others, are nevertheless such as would come within sub-divisions 2 and 3 of the statute, 722 of the Penal Law. I might mention, also, the case of People vs. Himpel, Your Honor, reported in 259 - 297 New York. I do not know the page. That case stands on the premise that if the defendant being charged of one section of the disorderly conduct statute, and if the proof shows another connection, he may be convicted of that section, although he is not specifically charged. The People respectfully submit to the Court that Stephen Gordon should be found guilty of the charges, namely, Penal Law, Section 722, Subdivisions 2 and 3, which are what he is charged with. Now, with respect to Cannon. Cannon has been said to be an innocent truck driver here. All he did was drive a truck. But I think there is far more to it than that, he being an active member of C. O. R. E. He took this job without any concern for payment; without any concern for the hours; without any concern other than to do a job, knowing what it was going to be. He conferred with Freedman for sometime. Freedman gave us the entire conversation, and among the conversations Freedman told him about the truck, what it contained, and where the contents came from. This was a labor of love for Cannon.

MR. MC GINLEY: (cont'g) He knew exactly what was going to happen: that they were going to unload debris from the truck and present it as evidence to the Commissioner. As to what Cannon thought Freedman meant by "unloading debris", we cannot go into here. He knew that debris was going to be unloaded in City Hall at the Municipal Building area. In fact, it must have touched him so much that he requested Freedman for solace that no arrest would result. At least it put him on his guard, which necessitated further questioning. I think he had a duty to inquire if he were to join this conspiracy, especially when he expected danger, as he apparently did. Now, as to the other defendants, there isn't too much to say. Freedman, of course, the brains of the outfit, I think it has been shown since this case started, made the preparations. When the truck got downtown, he actually threw the stuff off, all the garbage. He admitted that.

MR. SCHIFFER: Your Honor, I think it would be well if Mr. McGinley made some small attempt to stay with the record.

THE COURT: Proceed.

MR. MC GINLEY: He threw off the garbage, and he gave us some details of other people he had seen throwing garbage. For brevity's sake, both the police officer and Freedman said that Kalb was throwing garbage; that Gonzalez was throwing Garbage, and Freedman even mentioned Vasquez

MR. MC GINLEY: (cont'g) throwing garbage; so perhaps they got off easy. All that Section 1220 of the Vehicle and Traffic Laws require is that debris be thrown into a public roadway. We have admissions on the stand that that was exactly what was done. Boyer was seen grovelling in the debris, picking it up and throwing it out of the truck. He, too, wasn't charged with Section 1220 of the Vehicle and Traffic Laws. However, he was one of those who was outside of the truck, grasped arms with three or four other defendants and chanted in a loud and militant voice, "We shall overcome". He stood there when Captain Licht said "move on or you will be arrested". While he said it twice. He refused to move on. He stood there and invited arrest. He should be found guilty of the chrages of violation of the Penal Law, Section 722, Sub-divisions 2 and 3. Of course, Freedman is charged with violation of the Penal Law, 722, 2 and 4, in addition to throwing garbage. I think his actions go from the inception of this plan until its conclusion, so that he violated both those sections in addition to 1220. Kalb is charged with Section 722, 2 and 4, and in addition to violation of the Vehicle and Traffic Laws. He was seen by his own conspirator, by his own co-defendants, throwing garbage and also by the police, and if that action wasn't enough to cause a breach of the peace, he too grasped hands, held arms with

MR. MC GINLEY: (cont'g) the other defendants and defied the police when told to stop the action and to move on. Gonzalez stood in that circle and there has been some testimony that he doesn't speak English. It is difficult to conceive of him standing in that circle without knowing what was going on. Gonzalez was with the truck from the beginning. Was another member of this battle group. Schaefer, of course, and Vasquez are both charged with violation of Section 722, sub-divisions 2 and 3. They joined arms; they sang; they chanted; they refused to move on; they were told to do so by the police. It is difficult to go any further. To make any further argument because these are such patent offenses, there is hardly any excuse other than their intentions, which counsel has sought to bring out, which could in no way excuse their actions. To get back to the area where the truck stopped, the officer testified, as did Gordon, this morning, incidentally, that the truck came to a stop in the second lane and was there then pulled over by an officer. If the officer hadn't pulled the truck over, we might have had litter in the middle of Park Row. As it was, it still took up quite a bit of Park Row because traffic was stopped. Counsel stated before that there is nothing inherently wrong, inherently unlawful about unloading debris. I couldn't agree more with that. But to unload garbage and vermin at City Hall can be said to be more

MR. MC GINLEY: (cont'g) than inherently unlawful. We have statutes to protect us against such forays. The People respectfully submit to the Court that we have shown beyond a reasonable doubt that all of the defendants should be found guilty as charged of all of the offenses with which they are charged. Thank you.

THE COURT: Anything further on either side.

MR. KAPLAN: Just one remark, Your Honor. I want the record to indicate my feeling as to this business of the conjunctive article "and". Judge, the complaint charges disorderly conduct. I submit to the Court that the complaint is the pleading, the only pleading to which the defendants were able to defend themselves agains t. The use of the conjunction "and" means a double standard of proof on the People, notwithstanding what the statute reads. Therefore, it is my understanding, in view of that, that the People have to prove, beyond a reasonable doubt, that each and every defendant charged with the offenses intended to provoke and breach the peace, but not only that by their actions a breach may have been occasioned; both, not only one. That's all the remarks I have.

MR. SCHIFFER: I want to make it clear that my failure to reply to Mr. McGinley's numerous mis-statements of

MR. SCHIFFER: (cont'g) facts Or his numerous distortions should hot be taken as an admissinn that anything he stated which is contrary to the record is correct.

MR. MC GINLEY: No more than mine to Mr. Schiffer. It was professional courtesy more than anything else.

THE COURT: All right. Court will now recess for lunch, and re-convene at 2:30.

* * *

The above is a correct
transcript of the minutes
taken in this case.

J. A. Yearwood
Official Court Reporter

At an Appellate Term of the Supreme Court, First Department, held at the County Court House, Borough of Manhattan, City of New York, on the 13th day of January 1964

Present:—

Hon. SAMUEL M. GOLD, J. P.
" WILLIAM C. HECHT, JR.
" GEORGE TILZER
Justices.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent

vs.

JOEL FREEDMAN, JEFFREY KALB and EULETERIO GONZALEZ, etc.
DefendantS -AppellantS

Order Dismissing Appeal for Failure to Prosecute.

The above named appellantS in this action having appealed to the Appellate Term of the Supreme Court, First Department, from a judgment of conviction of the Criminal Court of the City of New York, County of New York, entered on the 5th day of September 1963, and it appearing that the return upon said appeal has not been duly filed, and the appeal has not been noticed for argument within one hundred twenty (120) days from the date of service of the notice of appeal, nor the time to do so enlarged,

IT IS HEREBY ORDERED AND ADJUDGED that the appeal from said judgment of conviction be and the same is hereby dismissed, pursuant to the provisions of Rule III (2) (c) of this court.

Justice Appellate Term, Supreme Court, First Dept.

New York 13, New York

CLERK, CRIMINAL COURT NEW YORK COUNTY
100 Centre Street,
New York 13, New York

COURT REPORTER'S MINUTES

Criminal Court of the City of New York

Part 10, County of N.Y.

THE PEOPLE OF THE STATE OF NEW YORK
on the complaint of

vs George Cannon,
Eleuterio Gonzalez,
Joel Freedman,
Jon Schaeffer,
Antonio Vasquez
Stephan Gordon,
Alexander Boyer,
Jeffery Kalb, Defts.

BEFORE

Hon. F. X. O'Brien (9/9, 9/12)
Maurice W. Grey (9/13)
Judge.

Sept. 9, 12, 13, 1963. 19

CHARGE

TRIAL (or) HEARING

APPEARANCES:

For the People

For the Defense

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS

A. Schiffman.
Official Court Reporter

Criminal Court of the City of N.Y.

Part 1C: County of N.Y.

- -X

The People of the State of N.Y.

:

-vs.

GEORGE CANNON,
ELEUTERIO GONZALEZ,
JOEL FREEDMAN,
JON SCHAEFFER,
ANTONIO VASQUEZ,
STEPHAN GORDON,
ALEXANDER BOYER,
JEFFERY KALB,
Defendants.

: Doc. B6296 - 99
C14230-33

Charge:

722, S ubd. 2 &
4 of the P.L.

- -X

Before: HON. F.X. O'BRIEN,
Judge of the Criminal Court.

Sept. 9, 1963.

Appearances:

For the People:

GIRARD McGUIRE, ESQ.,
Asst. District Attorney.

Richard Corkum,
Court Officer.

Alan Schiffman,
Official Court Reporter.

COURT OFFICER: Calendar Number 1, George Cannon, Eleuterio Gonzalez, Jeffery Kalb, Joel Freedman, charged with violation of 1220 Vehicle & Traffic Law. Calendar Number 2, Jon Schaeffer, Antonio Vasquez, Stephan Gordon, and Alexander Boyer, charged with Section 722 and 3 of the P_enal Law. Calendar Number 3, Eleuterio Gonzalez, Jeffry Kalb, and Joel Freedman, charged with violation Section 722, Subdivision 2 and 4 of the Penal Law.

THE COURT: Yes, District Attorney?

MR. McGUIRE: Your Honor, these cases were on in Part 30 of the Supreme Court this morning for a motion on a certificate for reasonable doubt. Judge Gerlich (Phonetic) reserved decision until Thursday, and by stipulation with defense counsel and myself, the stay was extended until ---

THE COURT: Adjourn these cases in this Court, then in the ---

MR. McGUIRE: --- the 12th of

September.

THE COURT: That's Thursday.

MR. McGUIRE: That's correct.

THE COURT: September the 12th, 4 P.M.

MR. McGUIRE: Right.

THE COURT: All right.

****

(Case adjourned to September 12, 1963)

Criminal Court of the City of N.Y.

Part 10: County of N.Y.

Doc. #B6296
C6297
C6298
C6299

- -X

The People of the State of N.Y.

-vs.

GEORGE CANNON,
JEFFERY KALB,
JOEL FREEDMAN,
J. SCHAEFFER,
A. VASQUEZ,
S. GORDON,
A. BOYER,
ELEUTERIO GONZALEZ, Defts.

- -X

Doc. #C14230
C14231
C14232
C14233

Charge:

722, Subd. 2 & 4 of
the Penal Law.

Before: -HON. FRANCIS X. O'BRIEN,
Judge of the Criminal Court.

Sept. 12, 1963.

Appearances:

For the People:

PATRICK W. MCGINLEY, ESQ.,
Asst. District Attorney.

For defendants:

GEORGE SCHIFFER, Esq.

Richard Corkum,
Court Officer.

Alan Schiffman,
Official Court Reporter.

COURT OFFICER: Calendar Number 1, 43 and 44, George Cannon, Eleuterio Gonzalez, Jeffrey Kalb, Joel Freedman, charged with violation 1220; Docket Number 14235, 36, 37, Eleuterio Gonzalez, Jeffrey Kalb, Joel Freedman, charged with 722, Subdivision 2 and 4; Docket 14320, 31, 32, 33, J. Schaeffer, A. Vasquez, S. Gordon, A. Boyer, charged with violation of 722, Subdivision 2 and 3 of the Penal Law. Defendants are all represented by Counsel.

MR. SCHIFFER: George Schiffer.

THE COURT: Mr. Schiffer, I understand that the bondsman is going to write appeal bonds.

MR. SCHIFFER: Yes, your Honor.

THE COURT: And he hasn't gotten around to doing it. Suppose we do this, suppose we adjourn this case for all purposes, and tomorrow we'll ~~l~~give you time to get your appeal bonds, is that agreeable to you?

MR. SCHIFFER: Thank you very much, your Honor, that's agreeable.

****

(Case continued to September 13, 1963.)

Criminal Court of the City of N.Y.

Part 1C: County of N.Y.

- -X
The People of the State of N.Y. :
ELEUTERIO GONZALEZ, Doc. #C6296
-vs. GEORGE CANNON, : C6297
JEFFERY KALB, C6298
JOEL FREEDMAN, : C6299
J. SCHAEFFER, C14230
A. VASQUEZ, : C14231
S. Gordon, C14232,
A. BOYER, Defts. - - - - -X C14233

Charge: 722 Subd.2
& 4 P.L.

Before: HON. MAURICE W. GREY,
Judge of the Criminal Court.

September. 13, 1963

Appearances:

For the People:

GIRARD McGUIRE, ESQ.,
Asst. D.A.

Richard Corkum,
Court O_fficer.

Alan Schiffman,
Official Court Reporter.

COURT OFFICER: Docket Number B6296, 97, 98, 99, George Cannon, Eleuterio Gonzalez, Jeffery Kalb, Joel Freedman, charged with violation of 1220 of the Vehicle & Traffic Law; Docket 14230, 31, 32 and 33, Jon, J-o-n, Schaeffer, Antonio Vasquez, Stephan Gordon, Alexander Boyer, charged with violation 722, Subdivision 2 and 3 of the Penal Law; Docket 14235, 36, and 37, Eleuterio Gonzalez, Jeffery Kalb, and Joel Freedman, charged with violation of Section 722, Subdivision 2 and 4 of the Penal Law. Your Honor, on these cases, the cases were put over to Monday for execution of sentence. Stay of execution of sentence was granted until the 12th. On the 12th, the lawyer appeared in front of Judge O'Brien, and stated for the record that the appearance --- that the appeal had been granted, and appeal bonds were being issued. However, it was too late to have the appeal bonds issued that day, and he requests that the case be adjourned to the

13th so the appeal bonds could be forthcoming that day. I have checked with the Supreme Court, and the appeal bonds have not been written up as yet, but the stay was granted. I did see the papers; Judge Sarafite did grant the stay.

MR. McGUIRE: May we put it on for Monday, Judge.

COURT OFFICER: A request that this be put on for Monday.

THE COURT: To perfect the appeal.

****

Certified to be a true and correct
transcript of minutes in this case.

Alan Schiffman

Alan Schiffman, Official Court
Reporter.

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1C, NEW YORK COUNTY

------------------------X
THE PEOPLE OF THE STATE OF NEW YORK : Docket Nos.
: 14230-33
-against-
JON SCHAEFER,
ANTONIO VASQUEZ, : Charge: 722, Sub.
STEPHAN GORDON, : 2 & 3
ALEXANDER BOYER,
Defendants.
------------------------X All Purposes

------------------------X
THE PEOPLE OF THE STATE OF NEW YORK : Docket Nos.
: 14235-37
-against-
ELEUTERIO GONZALEZ,
JEFFREY KALB, : Charge: 722, Sub.
JOEL FREEDMAN, : 2 & 4
Defendants.
------------------------X All Purposes

------------------------X
THE PEOPLE OF THE STATE OF NEW YORK : Docket Nos.
: 6296-99
-against-
GEORGE CANNON, : Charge: 1220 VTL
ELEUTERIO GONZALEZ,
JEFFREY KALB,
JOEL FREEDMAN,
Defendants.
------------------------X All Purposes

R. A. CORKUM,
Court Officer.

DAVID SEIDMAN
Official Court Reporter

September 16, 1963

New York, N. Y.

Before:

HON. EDWARD D. CAIAZZO,
Judge.

APPEARANCES:

FOR THE PEOPLE:
GERARD MCGUIRE,
Assistant District Attorney
New York County

* * * *

COURT OFFICER: 61, 62 and 63, Dockets 14230, 31, 32 and 33, J. Schaefer, A. Vasquez, S. Gordon and A. Boyer, violation 722, subdivision 2 and 3 of the Penal Law. 14235, 36 and 37, Eleuterio Gonzalez, Jeffrey Kalb, Joel Freedman, 722, subdivision 2 and 4 of the Penal Law. B6296, 7, 8 and 9, George Cannon, Eleuterio Gonzalez, Jeffrey Kalb and Joel Freedman, violation of 1220 of the Vehicle and Traffic Law.

MR. MCGUIRE: Your Honor, on these cases, the defendants were sentenced to--to start Monday of last week. Sentence was stayed until Thursday Your Honor, for a certificate of reasonable doubt to be granted. Certificate was granted by the Supreme Court. The Supreme Court, the District Attorney had received their copy of it. The lawyer Mr. Schaefer, came into court Thursday afternoon, spoke to the District Attorney and Judge O'Brien. The District Attorney's name was Patrick McGinley who was in on the case, and it was adjourned until Friday, in order for the Criminal Court to be notified of--however some waiver or another, never were notified officially. We did check and we found out that it is, a motion had been granted and a certificate of reasonable doubt has been granted. Appeal bonds were issued by the higher court. Now, I have called up the attorney Mr. Schaefer all day long, and he says that copies of that will be forthcoming to the criminal court to attach to our papers.

JUSTICE CAIAZZO: 9/20/63 each one.

COURT OFFICER: Bail or parole continued?

JUSTICE CAIAZZO: Yes, bail continued. This is parole continued. Bail continued.

* * * *

The above is a correct transcript of the minutes taken in this case.

Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK

APPEALS BUREAU

RETURN ON APPEAL

People v. George Cannon et al

NOTICE OF APPEAL SERVED September 9, 1963 19......

AMENDED NOTICE OF APPEAL SERVED ....19......

Borough of Jurisdiction New York

Charge Sec. 722(2 & 3) P.L. Sec. 1220 V. & T Law

Date of Trial August 29, Sept. 3,4,5, 1963 19......

Trial Judge George S. Rader

Date of Sentence Sept. 5, 1963 19......

Sentence see over

....

....

Judge George S. Rader

CRIMINAL COURT OF THE CITY OF NEW YORK

By ....

Director - Appeals Bureau

8-26-63	9-5-63
8-29-63	9-9,12,13-63
9-3-63	9=16-63
9-4-63	9-20-63
	complaints

Dated: New York City

November 9, 1965 19........

The within record is ordered filed.

November 9, 1965

J.C.C.

CRIMINAL COURT OF THE CITY OF NEW YORK
100 CENTRE STREET
NEW YORK, N. Y., 10013

Sec. 722(2,3) P.L.	Jon Schaeffer Antonio Vasquez Stephan Gordon Alexander Boyer	5 days Workhouse
Sec. 722(2,4) P.L.	Eleuterio Gonzalez Jeffrey Kalb Joel Freedman	5 days Workhouse
Sec. 1220 V&T Law	George Cannon Eleuterio Gonzalez Jeffrey Kalb Joel Freedman	10 days Workhouse

All sentences to run concurrently

MSS SEDFRE

STATE OF NEW YORK V. CANNON, GEORGE et al - CASE, CORRESPONDENCE,
1963, 1967

Historical Society of Wisconsin

Please Retain Original Order

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK PART 2B

THE PEOPLE OF THE STATE OF NEW YORK	:	Docket Nos. B6296-6299
against	:	Charge: Viol. V.T.L. Sect. 1220
GEORGE CANNON, ELEUTERIO GONZALEZ, JeFFERY KALB, JOEL FREEDMAN,	:	Trial - 8/29/63
Defendants.	:	100 Centre Street, NYC

* * *

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK PART 2B

THE PEOPLE OF THE STATE OF NEW YORK	:	Docket Nos. C14230-33
against	:	Charge: Disorderly Cond.
JOHN SCHAEFFER, ALEXANDER BAYER, ANTONIO VASQUEZ, STEPHEN GORDON,	:	Trial - 8/29/63
Defendants.	:	100 Centre Street, NYC

Before: HON. GEORGE S. RADER,
Judge.

Appearances:

For the People:

PATRICK MCGINLEY, ESQ., Assistant District Attorney, 155 Leonard Street, New York, New York.

RICHARD H. KUH, ESQ., Assistant District Attorney, 155 Leonard Street, New York, New York.

For the Defendants:

GEORGE SCHIFFER, ESQ., 40 East 39th Street, New York, New York.

KENNETH KAPLAN, ESQ., 37 Wall Street, New York, New York.

Alejandro Gonzalez, CSR
Official Court Reporter

BRIDGE OFFICER: Docket Numbers B6296, B6297, B6298, B6299, George Cannon, Eleuterio Gonzalez, Jeffery Kalb, Joel Freedman, charged with violation of the vehicle and traffic law, Section 1220.

Docket Numbers C14230, C14231, C14232, C14233, John Schaeffer, Alexander Bayer, Antonio Vasquez, Stephen Gordon, charged with disorderly conduct, subdivisions 2 and 3. Continued trial.

DISTRICT ATTORNEY: Pat McGinley, District Attorney.

DEFENSE COUNSEL: George Schiffer, 40 East 39th Street, New York, New York.

DEFENSE COUNSEL: Mr. Kenneth Kaplan, 37 Wall Street.

BRIDGE OFFICER: Continued trial. Have a seat. You are stillunder oath .

PTL. BROWN was recalled to the witness stand, and after having been previously sworn by the Court, testified as follows:

THE COURT: All right, the last thing we did was to admit into evidence Defendant's Exhibit "A." It has been marked?

BRIDGE OFFICER: Yes, your Honor.

DEFENSE COUNSEL: Your Honor.

THE COURT: Yes, sir?

DEFENSE COUNSEL: I wonder if the People would care to stipulate that the top of that exhibit is North.

THE COURT: Supposing you mark the various corners with ink. Supposing we mark North, East, West, South on this.

DISTRICT ATTORNEY: Sure.

THE COURT: As long as you agree upon it, it will be part of the exhibit.

DISTRICT ATTORNEY: Your Honor, I believe that we were about to ask the police officer to mark on this exhibit where he saw the truck stopped and where he stopped his own car.

THE COURT: That is correct.

DIRECT EXAMINATION

BY MR. MCGINLEY:

Q Officer, I ask you to identify -- I'd ask you to do that, please. Mark the defendants'truck with an "X," your car with an "O."

DEFENSE COUNSEL: With a "P" if he pleases, for police.

BRIDGE OFFICER: Yes, your Honor.

DEFENSE COUNSEL: Your Honor.

THE COURT: Yes, sir?

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DIRECT EXAMINATION
BY MR. MCGINLEY:

Q Officer, I ask you to identify -- I'd ask you to do that, please. Mark the defendants'truck with an "X," your car with an "O."

DEFENSE COUNSEL: With a "P" if he pleases, for police.

truck?

THE COURT: Now, when you say "truck," make sure you distinguish between the cab and the body and persons. Distinguish.

A Freedman was in the body of the truck. Kaplan was in the body of the truck, and Gonzalez was in the body of the truck.

Q What, if anything, did you see Freedman, Kaplan and Gonzalez do, Officer?

A First I walked to the side of the truck, and they were throwing --

THE COURT: When you use the words "they were," do you mean -- can you refer specifically to all three, Freedman, Kaplan, and Gonzalez?

THE WITNESS: Yes. They were at that time throwing the material off the truck.

Q Where were you when you saw them throw these materials out of the truck?

A He was right where the material was landing.

Q What part?

THE TRUCK: And with relation to the truck, how far was it? Where was it? what side of the truck?

THE WITNESS: On the right-hand side of the truck, by it, near the body, at the body, by the rear of the truck. And I was between the truck and this material that was falling down.

THE COURT: Was this material that you allegedly saw falling -- did it fall on the sidewalk or on the highway?

THE WITNESS: At that point, your Honor, is where the curb is cut for the City Hall Plaza. There is no street there. There is no sidewalk, I should say.

THE COURT: Well, related to the sidewalk portion as distinguished from the gutter portion, would it, assuming there were a curb there, would it have landed on the sidewalk or on the gutter?

THE WITNESS: It would land on both.

THE COURT: On both? All right.

Q When you saw this happening, officer, you saw these three defendants, Freedman, Kaplan and Gonzalez throwing this material out of the truck, what did you then do?

A I then walked to the front of the truck, and there was some people trying to get the truck started. I tried to assist them, and that failed. I told them to stop throwing the material.

THE COURT: Now, don't use the words "they were," and "them." Be specific when you relate any conversation or activity you saw, as to whom you had the conversation with, who did the talking, and who did the throwing, naming them by name only.

THE WITNESS: Your Hohor, I shouted up to the truck, to **Mr.Kaplan**to stop throwing material. He didn't do it. He didn't recognize my voice, or he ignored my voice. He made no motion as to understanding me, or he just continued throwing. Freedman was also present.

THE COURT: Where was he?

THE WITNESS: At that point they were throwing material off the right side of the truck, from inside the truck.

Q Where was Gonzalez?

A Gonzalez was also in the truck at that point. I couldn't actually see him. All I could see were hands and heads all over the side of the truck.

MR. KAPLAN: Your Honor, in that case

I move to strike out everything that came before that as to Gonzalez.

THE COURT: Let me inquire if you have any means of identifying these people. Did you actually see them and recognize them?

THE WITNESS: Yes, your Honor.

THE COURT: You say you only saw Gonzalez' feet did you say?

THE WITNESS: Your Honor, if I could set the situation up. The body is quite high. When you are standing on the side of the truck looking up, you can't look through the truck.

THE COURT: How far away were you from the truck?

THE WITNESS: Approximately a foot at that point.

Q And when you looked up from that point, what did you see?

A I could see hands and material coming over from the side of the truck.

THE COURT: Were you --

A And I also know that at that point Freedman Kaplan and Gonzalez was in the truck.

THE COURT: Did you thereafter -- were

you thereafter able to make a more positive identification?

THE WITNESS: I then went up onto the truck.

THE COURT: And who did you see?

THE WITNESS: Freedman, Kaplan and Gonzalez.

THE COURT: All right.

Q And when you got up to the truck and saw these three men, what were they doing then?

A At that point Gonzalez was in the innermost part of the truck, picking up material. Freedman was more to the rear of the truck, more to the rear of the truck; and it would be on the right side of the truck. It would be on my left side -- left, because I was facing the back of the truck. And Kaplan was in the middle.

Q What was Freedman doing?

A I am not sure if he was bending over at that point or not. It was very --

Q What was Kaplan doing?

A At that point? I am not quite sure.

Q Were they the only three people in the body of the truck at that time?

A No, there were others.

THE COURT: In the body of the truck?

THE WITNESS: There were others.

Q Who else was in the body of the truck?

A I know that **Bayer** was in the body of that truck.

Q Is that defendant in this courtroom here?

A Yes, he is.

Q Would you point him out?

A This defendant right here; that is, the first row, the man on the left.

THE COURT: Is your name Bayer?

MR. BAYER: Bayer.

A Yes.

THE COURT: You say he was in the body of the truck at that time?

THE WITNESS: At that time, yes, sir.

THE COURT: Did you see him -- what if anything did you see him do?

THE WITNESS: At that point he was bending over.

THE COURT: Did he have anything in his hands? Was he lifting anything, laying something down?

THE WITNESS: He had his hands in the debris. I could not be sure if he was searching for something or --

THE COURT: All right.

Q What was some of the debris that came out of the truck?

A There were old springs. There were doors. There was a wooden cabinet. There were mattresses.

THE WITNESS: When I say "mattresses," your Honor, I mean also padding for couches and stuff.

THE COURT: Bedding material like?

THE WITNESS: Bedding material. Upholstery material.

THE COURT: Upholstery material, springs, mattresses, and you say a chest?

THE WITNESS: A wooden cabinet. It would be something like a dish cabinet.

THE COURT: A wooden cabinet?

THE WITNESS: And bedding and upholstery material.

Q And did you say before that this debris landed not only on the sidewalk portion of City Hall Plaza, but also in the gutter?

DISTRICT ATTORNEY: And also in the gutter.

A Yes.

MR. KAPLAN: I object to, number one, leading, and, number two, recapitulating. That was on the part of the People, because that is a matter --

THE COURT: Objection sustained on the first basis. Don't lead him. Ask him what if anything landed where.

Q Did this material that you have described as being thrown from the truck-- Officer, where did it land?

A It landed in the roadway. And if I can clarify this a little further -- there is a curb cut at that point, where, ordinarily, if there would not be a curb cut, there would be a sidewalk. Plus, in the roadway of Park Row --

Q And what was the condition of the vehicular traffic at that point?

A It was congested.

Q How far was it congested?

A Well, from -- all north of the truck was congested.

Q Do you remember at that point what, if anything, was in front of the truck or south of the truck?

A To my knowledge, there wasnothing in front of the truck.

THE COURT: In front of the truck would be south of the truck, I believe.

THE WITNESS It would be south of the truck.

THE COURT: Now, behind the truck would be north?

THE WITNESS: Yes.

THE COURT: So the question was, "What was behind the truck?" What was behind the truck? What was north of the truck? What was south of the truck? Your answer is that south of the truck was nothing. Now, what was north of the truck?

THE WITNESS: North of the truck there were automobiles, regular vehicular traffic.

Q Now, were there --

THE WITNESS: Your Honor --

Q Go ahead.

THE WITNESS: May I say a point here. Now, we --

THE COURT: If it is responsive to

the question you may.

THE WITNESS: Well, it has to do with the condition that was in front of the truck.

THE COURT: Yes?

THE WITNESS: The truck was going south on Lafayette Street -- on Park Row, rather -- when it stopped. It then turned in after it stopped. It stopped and then it turned in.

THE COURT: Turned in toward where?

THE WITNESS: In, toward City Hall Plaza.

THE COURT: I see.

THE WITNESS: So, in front of the truck, actually right -- if you were sitting in the cab of the truck and looking in no other direction but in front of it, there would be the curb and the barriers there. But in the normal course, if it was flowing, if the traffic was flowing, it would be pointing out in the center of Park Row.

THE COURT: Well, then, since you tell us that, I think more accurately you could describe the situation to be -- to use the truck as a point of reference, say south of the truck and north of the truck -- it would be along Park Row and north of the truck would be Park Row and Lafayette Street.

THE WITNESS: If we would use the truck as a point --

THE COURT: Well, you have used the truck as a dividing line. What was south along Park Row was south of the truck that would be heading toward --

THE WITNESS: Broadway.

THE COURT: -- Broadway.

THE WITNESS: And there was nothing there.

THE COURT: How about north of the truck?

THE WITNESS: Heading toward Lafayette there was traffic.

THE COURT: There was traffic passing this truck?

THE WITNESS: If it was, your Honor, it was going very slow. All I could see is the traffic was congested.

THE COURT: Was it stopped?

THE WITNESS: At that point, yes.

THE COURT: All right.

MR. KAPLAN: I have a point, your Honor. At what point near the truck, a block away, three blocks away?

THE WITNESS: I could not swear to the point of any one vehicle moving. I can swear to the fact that there were vehicles stopped. Now, if one vehicle out of the whole pack was moving, I could not swear to it.

THE COURT: All right, I think we understand the situation.

Q What was it?

THE COURT: You mean, traffic was backed up. It was stopped, but in that line of stopped traffic there may have been one or two or three or four that were moving slightly?

THE WITNESS: That is right, sir.

Q What was the condition of pedestrian traffic at that particular point where the truck was located?

A At thatparticular point, at that particular time, when I was at the truck, pedestrian traffic was completely congested.

MR. KAPLAN: I object to the word congested, your Honor. I don't know what it means.

THE COURT: Sustained.

Q Be more specific, officer, tell us what people were doing.

A They were standing.

Q What were they doing?

A They were shouting. I don't know what words they were shouting. They were cheering the defendants on.

Q Can you recall anything that was said?

A The words I don't know exactly. I know they were saying, "Hurray," clapping, and cheering.

Q In which direction were these pedestrians or people who were standing around? Which direction were they looking?

A They were looking at the truck, which would be east.

Q East?

THE COURT: How many people were there at that particular time in that vicinity?

THE WITNESS: In that immediate area, I would say a 15 foot radius of the truck -- I should not say that, because I am not so sure of the footage; but in that area there was about 50 people, I would say.

Q What did you do then?

A After making these observations I then climbed up on the truck and ordered the People offthe truck.

Q And do you recall who got off the truck when you ordered them off?

A The people who were on the truck got off, but Kaplan Gonzalez, and Freedman were in the group.

Q I see, and what did you do then?

A When they dismounted off the truck and the defendants -- my defendants, along with others --

Q By your defendants you mean?

A Freedman, Kaplan and Gonzalez, and Gonzalez, and they did form a group or a circle and put their arms around each other's shoulders and started singing or yelling. They were loud.

Q You recall what they were doing, was it singing or yelling?

A I know they said, "Freedom now." What other words came out, I don't know.

Q In what tone of voice did they speak or sing?

A They were shouting.

Q And what were these people in the vicinity, these pedestrians that we have spoken about? What were they doing while the defendants with arms -- were speaking loudly or singing?

A They were also shouting and --

MR. KAPLAN: Your Honor, may I object. I of course know that within certain limits a police officer can testify as to loudness. However, the use of shouting is such a generic term I am not quite sure what he means by shouting.

THE WITNESS: Other than shouting outside of City Hall Park, I really don't know how I would make it more accurate or more specific but the word shouting.

MR. KAPLAN: But the word"shouting"seems so generic and seemingly so cogent to the case that I would object to its use.

THE COURT: Objection overruled.

MR. KAPLAN: I respectfully except, your Honor.

Q Officer, you also placed the defendant Cannon under arrest; is that correct?

A Thatis right.

Q Now, did you at any time have any conversation with any or all of these defendants at theplace of arrest or at the station house?

THE COURT: Now, before we leave this, the Court is a little bit confused. When you said thatyou ordered Freedman, Kaplan and

Gonzalez and others and they got off the truck, then you went on to say they all put their arms on each other's shoulders, and they formed a sort of a circle and they kept shouting and singing, and some of the words were "Freedom now." Now, when you say, "others," whom do you mean?

THE WITNESS: I mean, your Honor, the defendants. When I say others I mean there were other people there. Now --

THE COURT: Among the other people were --

THE WITNESS: Among the others --

THE COURT: Just one moment. Let me finish my question so you can make a proper reply. Among the other people, were there any of the defendants there, among those thatyou term other people?

THE WITNESS: Were there any defendants?

THE COURT: Were the defendants these defendants in court today, among those whom you designate "other people."

THE WITNESS: Yes, yes.

THE COURT: Who were they? So far you have told me Freedman, Kaplan and Gonzalez. Now, who among the defendants constituted the other people?

THE WITNESS: I do know that Bayer was there. I do know that Gordon was there.

THE COURT: Any of the others?

THE WITNESS: I do know there were others, but I would not swear to the others.

THE COURT: But you do know that Bayer and others there were part of the persons who did what you described?

THE WITNESS: Thatis correct.

THE COURT: All right, proceed. You also arrested, you say, Cannon?

THE WITNESS: Yes, I did.

Q Did you see what if anything Cannon was doing after the truck came to a stop?

A I didn't see what Cannon was doing, no.

Q Did you at any time question any or all of the defendants?

A (no response)

Q At the scene or at the station house?

A At the station house, I believe.

Q Please tell his Honor to whom you said anything and what if any reply you received?

A (no response)

Q As best you can recall.

A To the best of my recollection, I pointed to several of the defendants in the station house, and I said, "You were on the truck, and you were on the truck," and I was going to a third defendant, when one of the others said, "Don't answer anything." That, I remember.

MR. KAPLAN: Your Honor, I move the entire answer be stricken because of its vagueness.

THE COURT: Because of what is vagueness as to this defendant, this defendant, no name. Sustained. You tell us who you pointed to and whom you said that to, and who, if anybody, said, "Don't answer."

THE WITNESS: Gonzalez, I poihted to.

THE COURT: You mean you pointed to Gonzalez? Who else?

THE WITNESS: I said, "You were on the truck." Gonzalez said, "Yes."

THE COURT: Now, now, I think you should get this point. He said, "I pointed to

Gonzalez and said, "You were on the truck," and Gonzalez said, "Yes." Now, who else and what else?

THE WITNESS: Kaplan I pointed to, and I said, "You were on the truck." He said, "Yes."

THE COURT: Did he give any reply?

THE WITNESS: He said, "Yes." Freedman then spoke up and said, "Don't say anything else."

Q Officer, what became of the truck. Do you know?

A The truck was taken, impounded at the 5th Precinct.

Q Did you see it there?

A I saw the truck at the 5th Precinct.

Q Approximately what time was it when you saw the truck?

A The truck, oh, approximately ten minutes after the occurrence.

Q I show you People's Exhibit 1 for identification, previously marked, and ask if thatis a fair and accurate representation of the truck at that time you saw it, which was ten minutes after the occurrence?

A Yes.

DISTRICT ATTORNEY: That, your Honor, is People's Exhibit 1 against all the defendants.

MR. KAPLAN: I except. That is, I object, your Honor, on the grounds that it is immaterial how the truck looked after the event.

THE COURT: Let me see the picture. I show you this and ask you is that the way the truck looked when you took it into custody.

THE WITNESS: I personally did not take it into custody.

THE COURT: When it was taken into custody, is that the way it looked?

THE WITNESS: Yes.

THE COURT: Is that a fair representation?

THE WITNESS: That is a fair representation.

THE COURT: Now, do you offer it in evidence?

DISTRICT ATTORNEY: You object?

MR. SCHIFFER: Yes.

THE COURT: Objection overruled. It will be admitted into evidence as People's Exhibit 1.

DISTRICT ATTORNEY: I have no further questions at this time, your Honor.

CROSS - EXAMINATION

BY MR. KAPLAN:

Q Officer, you are attached to the 5th Precinct?

A That is correct.

Q And could you tell me for how long you have been with the 5th?

A Six years approximately.

Q And is the area covered by the 5th Precinct including Eldridge Street?

A It does.

Q Now, Mister, I ask you, do you have your memorandum pad with you?

A I do.

THE COURT: I didn't hear that last question.

THE WITNESS: Memorandum pad.

Q And did you make notations on the pad relative to the matter that you have under discussion today?

A Yes.

Q Prior to coming to the court, did you refer to any of your pad's notes? Prior to testifying, did you look?

A Yes.

Q May I see them?

THE COURT: To be turned over to counsel.

THE WITNESS: Let me point off where it has reference to.

MR. KAPLAN: You want to mark it?

THE WITNESS: Where it says, "15," up until that point.

DISTRICT ATTORNEY: Will the record reflect that the officer has in fact handed over his memorandum book to the counsel, and also that the officer did not refer to it while he was testifying.

THE COURT: It will reflect that.

Q Officer, do you have an arrest card with you?

A An arrest card?

Q Yes.

A No.

Q You have a complaint card?

A No.

Q Did you make any out at the precinct?

A Arrest cards?

Q Yes.

A Yes.

Q You don't have a copy with you now?

A No.

Q Did you make the arrest card out prior to these notes or subsequent to them, to the notes in your UF-16.

A The arrest cards were made out prior to the completion of the entry in the UF-16.

Q Prior to the entries here?

THE COURT: He says prior to the completion.

A Complete entry.

THE COURT: Indicating that --

MR. KAPLAN: Subsequent to something.

THE COURT: Indicating that some of the entries were made before, but it was completed there after. Is that what you are indicating?

THE WITNESS: That is right.

Q Some of the entries in this UF-16 were made before and then completed later, after the arrest cards?

A The entries in the memorandum book, which is the UF-16.

Q Have you testified in criminal trials before, officer?

A Yes, I have.

Q On these occasions, did you bring the arrest card with you or a copy of the arrest card?

DISTRICT ATTORNEY: Objection, your Honor.

A No.

THE COURT: Sustained.

DISTRICT ATTORNEY: May we have the answer stricken.

Q Did anybody tell you you needed the arrest card today?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Overruled.

A No. No one told me.

Q Were you requested by anybody to bring any official material?

A No. Your Honor, I was -- May I make a point, sir?

THE COURT: No, sir; no, sir. Don't make any point. You just answer questions.

MR. KAPLAN: With the Court's indulgence, may I?

THE COURT: Certainly. You may be seated and have time to read it.

Q Officer, you have a notation, 1:45 p.m. to 205 , Eldridge Street.

A That is right.

Q Now, you proceeded to 205 Eldridge Street at 1:45 p.m.; is that right?

A Yes.

Q May I ask you who told you to go there?

DISTRICT ATTORNEY: Objection, your Honor. Whoever told him to go is irrelevant. Besides, it is hearsay.

MR. KAPLAN: I don't mind it. It is cross-examination.

THE COURT: We do not permit hearsay on cross-examination.

MR. KAPLAN: Very well.

Q You went to 205 Eldridge Street pursuant to an order?

A That is right.

Q Was that order given to you by a superior officer?

A Yes.

Q And did that order among other things tell you that a truck was being loaded with certain debris and rubbish?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained.

Q Now, without telling me, officer, the context of the conversation you had, would you tell me who issued the orders to proceed to 205 Eldridge Street?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Overruled. He already said it was a superior officer.

DISTRICT ATTORNEY: My objection is purely on the grounds of irrelevancy.

THE COURT: Who was the officer?

THE WITNESS: Captain Licht.

Q Now, at 205 Eldridge Street, you saw a truck there; is that right, at 1:45?

A About that time, yes.

Q Did you arrive before the truck arrived, or was the truck there already?

A When I arrived the truck -- the truck? I

I do know of my personal knowledge that the truck was there earlier. When I drove up there was no truck there. As I was there the truck did come up the street.

Q Do I understand you to say, therefore, that you know of yourown knowledge that the truck was there prior to the time?

A I do.

THE COURT: You came there, but when you came there it was there at that time -- but it arrived -- or rather, it came back after you were there?

THE WITNESS: That is true.

THE COURT: When you say you had prior knowledge, was that based upon your own personal observation?

THE WITNESS: That was, yes.

THE COURT: All right.

Q Now, when you arrived at about 1:45 -- and that is just prior to the truck's reappearance the second time -- did the truck stop in front of Eldridge Street?

A The truck stopped in Eldridge Street.

Q All right, was anybody loading the truck at that point?

A No.

Q Was there anything in the back of the truck at that time it came back?

A Yes.

THE COURT: Was it loaded fully?

THE WITNESS: It was loaded to the point it left that area.

Q Now, about what time did the truck leave the area or -- strike that, your Honor. How long after 1:45 did the truck leave the Eldridge Street exit.

A Just a few minutes, counsel.

Q And what did you do when the truck left?

A When the truck left Eldridge Street?

Q What did you do?

A I then -- see, I went.

Q You followed it, right?

THE COURT: You followed it, generally speaking, substantially. You followed it?

THE WITNESS: I --

Q And then you followed it around the block to a point on Allen Street?

A Yes.

Q I think you said 165.

THE COURT: 165?

A In that area; in that area.

THE COURT: Is that near where there was that Parkway Restaurant or something?

THE WITNESS: Correct, two doors away.

THE COURT: Don't be surprised. I have some beds in that area; so I am familiar. I am not going to inspect the site. I must go there in person.

Q Now, the truck stopped at that point; is that right?

A That is correct.

Q And you were in the car?

A Yes.

Q And who was in the car with you?

A I had a police officer who was working with me at that time, as operator of the car.

Q What was his name?

A McCardon, Patrolman McCardon.

Q Was there a sergeant in that car?

A No, there was not.

Q Were you the only police car in that block, or were there others?

A No, I was not.

Q I beg your pardon?

A I was not.

Q How many other cars were there?

A To my knowledge, one more.

Q And wasthat an unmarked car?

A It was.

Q And were there police officers in that car?

A There were.

Q Could you give us the names, if you know, of the police officers in that car?

A I don't know.

Q How many were there?

A Two.

Q Was one a sergeant?

A There was.

Q Now, you parked behind the truck on Allen Street; is that correct?

A That is correct.

Q Where did the second police car park behind you?

A I believe it was to the right of me. It was at the curbline. I was away from the curbline; in other words, I was double parked

Q You were doubled parked?

A At that point.

Q Doubled parked to the second car or to the truck?

A I think I was double parked in the rear of the second police car. I was actually cross-side of him.

Q How long did the truck remain at that point?

A I would say, approximately 15 minutes.

Q Now, you remained with them for that length of time; is that right?

A Yes.

Q Did you stay in the car or did you go out?

A I was outside the car.

Q Did you talk to the driver?

A I did.

Q Was the driver Mr. Cannon?

A He was.

Q Wasthere anybody else in the cab of the truck, other than Mr. Cannon?

A There was, but I don't know who it was.

Q How long a conversation, for what length of time? Did you talk with Mr. Cannon?

A Approximately two minutes.

Q Would the Court excuse me just a moment?

THE COURT: Certainly.

Q May I ask you, Mr. Brown, did you actually have a conversation with Mr. Cannon? That is, did you speak to him?

A I spoke to Mr. Cannon, and --

Q And while you were talking to him, was there any other police officer with you thereat, standing near the cab of the truck?

A We were not standing near the cab of the truck.

Q Where were you?

A We were on the sidewalk, right at the Parkway Restaurant, which was two doors away.

Q You were at the Parkway restaurant; where was Mr. Cannon sitting, in the cab?

A Mr. Cannon was out of the truck, standing right next to me.

Q By the way, did you see Mr. Cannon get out of the cab?

A I did.

Q When he got out, were you already on the sidewalk?

A No.

Q You got out subsequent to that, right?

A Yes.

Q And then I assume Mr. Cannon -- you approached

A Mr. Allen was walking north on Allen Street, and I walked to the sidewalk, which would be in his part, yes.

Q And was anybody with you when you approached?

A No.

Q You were by yourself?

A Yes.

Q When you spoke to Mr. Cannon, were there any other police officers present, anybody else?

A Another police officer did come over.

Q Did he have a conversation too?

A Yes.

Q And were you there at that time?

A I was there.

Q And Mr. Cannon was there?

A Yes.

Q Was there a police officer, a sergeant?

A He was.

Q Now, did you, officer Brown, say to Cannon -- did you say to Mr. Cannon, in substance, Mr. Brown, that "We are here to see that the law is enforced. You can go where you want, but we are following," words to that effect?

A I did not say that.

Q I beg yourpardon?

A I did not say that.

Q Did the sergeant say that?

A In substance.

Q All right. Certainly, at this point you knew that the truck was going somewhere other than remain on Allen Street; is that right?

A I asked Mr. Cannon, where he wasgoing, and Mr. Cannon told me where he was going.

Q Up to the time that you asked, did you know where he was going?

A Not positively.

Q But you knew?

A In other words --

Q Excuse me, you knew they were going somewhere other than remain on Allen Street?

A I did know that.

Q Now, just answer these questions: Did you know they were going to the Municipal Building? Did you know that?

A No.

Q Did you know they were going to the office of Commissioner Byrnes of the Housing Department?

A No.

Q Were you?

THE COURT: Now, when you say, "Did you

know?" I want you to understand that knowledge means of your "own" knowledge, knowledge that you received from somebody who was about to drive that truck. He wants to you say, "Yes, sir." He did know.

Q At the time of the conversation?

THE COURT: Knowledge -- just remember this when you are questioned as to whether you knew-- the answer is to be predicated on knowledge which you received from someone who opened the truck or was about to open the truck. That would be the only knowledge that would be admissible at this stage.

A Could you ask me that questiona gain?

THE COURT: Your answer was no , but you said you did not know whether they were going to the Municipal Building.

THE WITNESS: Your Honor, I want to point out one thing there. He was talking about before I talked to Mr. Cannon. That is what I want to clarify.

DEFENSE COUNSEL : I beg your pardon, officer.

A You asked me if I knew.

THE COURT: Did you know where they were going?

Q Prior to speaking to Mr. Cannon?

A No.

Q The answer is no?

A No.

Q But subsequent to that you did learn, because Mr. Cannon told you; is that right? He told you where he was going?

A To the Municipal Building.

Q That was after you spoke to Mr. Cannon?

A Yes.

Q Once more, and I won't belabor it; prior to Mr. Cannon telling you that they were going to the Municipal Building, you didn't know that. You did not know he was going to the Municipal Building. You knew he was going elsewhere?

A Yes.

Q Officer, in your UF-16 you have a notation, "1:45 p.m. to 2205, Eldridge Street, in reference to CORE demonstration." All right, now, was that entry made in the book at 1:45 p.m. when you received the order to go there?

A Yes.

Q All right.

DEFENSE COUNSEL: Excuse me, I didn't hear thatanswer.

THE COURT: The answer was "Yes."

Q Now, you say you spoke to Mr. Cannon for a couple of minutes; is that right?

THE COURT: Two minutes.

A Yes.

Q Two minutes?

DEFENSE COUNSEL: Would your Honor forgive me for just one more moment?

THE COURT: Sure, certainly.

Q All right, officer, would you tell the Court, please, what you said to Mr. Cannon and what Mr. Cannon said to you?

A I asked him where he was going and what time does he expect to be there.

THE COURT: What did he say to you?

THE WITNESS: He said, "We are going to the Municipal Building, and we are supposed to meet down there about 2:30."

Q To which you replied what?

A I don't remember saying anything.

Q You spoke for two minutes, officer. That is a long time.

A I spoke in regular, normal, every-day conversation.

Q Tell us what the every-day conversation was. What did you say, if you remember.

THE COURT: If you recall.

A "What is the rat doing on the side?" That was one question. "Where did you get the rat?"

Q And what was the answer? Did he answer?

A I don't remember exactly what words it was, or verbatim.

THE COURT: We don't want you to give it to us verbatim. We want you to tell us in substance what he said. What was the general answer, now?

You asked him where did he get the rat. Did he tell you where he got it?

THE WITNESS: From the buildings.

THE COURT: What building. Did he tell you what building?

THE WITNESS: Well, I knew what building he was referring to, what building was it. It was a stretch of buildings on Eldridge Street.

THE COURT: What numbers?

THE WITNESS: I believe -- I know that they were working between 205 Eldridge and 215 Eldridge.

THE COURT: All right, he said the rat came from the building?

THE WITNESS: Yes.

Q When you say, "I knew they were working between --"

A Well, this is all hearsay. I didn't actually see them.

THE COURT: We do not want hearsay. Then you did not know whether they were working or not.

Strike that portion of your answer out; that you say that. You are certain that Mr. Cannon said that he did get it from the buildings?

THE WITNESS: From the buildings, yes, sir.

Q Were you present when the sergeanthad a conversation with Mr. Cannon?

A I heard some of it, yes.

Q Will you tell the Court what he said? Supposing I mention the earlier officer -- supposing --

DISTRICT ATTORNEY: Your Honor, could the officer answer the question.

DEFENSE COUNSEL: I withdraw it.

THE COURT: Withdrawn. Go ahead.

Q I will ask you a question, and you tell me if that is what the sergeant said. Now, at one point of the conversation on Allen Street, did the sergeant ask Mr. Cannon, "What are you going to do with this stuff?" and Cannon said, "I am going to the Municipal Building." Did you hear that?

A I am not sure.

Q Yes or no?

THE COURT: You do not recall?

A I do not recall.

Q Were you with the sergeant throughout the entire conversation with Cannon, or had you walked away?

A I don't recall if I walked away or if I was listening or if I was looking at something else. I don't remember exactly.

Q I see. Now, did you remember the sergeant saying this to Mr. Cannon: "When you go down to the Municipal Building I want you to --" this is in substance-- "I want you to observe all the traffic signals and give all proper signals." To which Mr. Cannon replied, "I will."

Do you remember any conversation like that?

A I remember that.

Q Do you further remember the sergeant saying, "As a matter of fact, you are occupying two parking zones. Please take one only." That is speaking on Allen Street. Do you remember that?

A Yes, I remember that.

Q You remember Mr. Cannon obeying the sergeant, parking in one parking zone, putting a dime in the meter?

A Mr. Cannon walked away. What he done after he left, I don't know.

Q Do you remember the sergeant saying, officer, "We will be following you all the way down to the Municipal Building"? To which Mr. Cannon in substance replied, "All right." Do you remember anything like that?

A I do not know if these were the correct words, but I do.

THE COURT: In substance.

THE WITNESS: In substance.

Q And do you further remember the sergeant saying, "Which way are you going? It would make it easier for us." To which Mr. Cannom replied, "I am not sure yet. I am being directed, but I will direct you." Do you remember anything like that?

A No.

Q Well, then, at this point, officer, that the truck was -- you learned, one, that the truck was not going to remain on Allen Street; number two, that it was going to the Municipal Building, right?

A Yes.

Q Number three, you --

THE COURT: You anticipated, or you pursuant to orders -- I assume it was to orders -- followed the truck.

DEFENSE COUNSEL: I would prefer to ask one question and get an answer.

THE COURT: All right, fine, fine.

Q Then, Mr. Brown, at that point then you knew that the truck was going to the Municipal Building; is that right?

A I did.

Q There was no talk about City Hall Park or City Park or Park Row, was there?

A City Hall did enter the conversation.

Q If I am wrong, officer, then say no.

THE COURT: No, no, just a moment.

DEFENSE COUNSEL: Your Honor, it is cross-examination, and I want to narrow it down so you know what my position will be.

THE COURT: I would prefer, as long as it is responsive to the question --

DISTRICT ATTORNEY: Your Honor, the officer was about to answer the question about City Hall.

A City Hall was mentioned.

Q Was this on Allen Street?

A That was on Allen Street. He mentioned the City Hall, and he also mentioned the Municipal Building.

Q Did you know at this point, based upon the questions I asked concerning the sergeant questions and your own conversation, that the truck was destined to the Municipal Building? You knew that.

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. This is what you were told. If you say --

Q This is what you were told?

THE COURT: Were you told it was going to the Municipal Building, or were you told that it was going to the Municipal Building and City Hall?

THE WITNESS: What I was told was that it it was going to the Municipal Building, and I believe the conversation went on, "And we are going to drive around to show these different officials the garbage."

I believe he said he was going to drive around City Hall Park.

THE COURT: All right.

Q But going to the Municipal Building. Isn't that true, as you knew, as far as you understood?

DISTRICT ATTORNEY: Objection.

THE COURT: Counselor.

DEFENSE COUNSEL; Your Honor.

THE COURT: I am listening to the evidence.

Q Then there came a time that the truck started around the block; is that right?

A (none)

Q From Allen Street, where did it go?

A It proceeded south to Rivington Street.

Q All right. Now, when the truck left the Allen Street site, were you right behind it?

A I was behind it. I would not say right behind it.

Q I beg your pardon.

A I would not say right behind it.

Q About how far, about how far was it?

A Oh, about 100 foot, 200 foot. At one point it was two or three blocks away.

Q I see, and how about the unmarked police car, was that between you and the truck, or was it behind you?

A I can't testify exactly the way the unmarked car was. I would say it was between me and the truck, but I did not see it at all times.

Q I see, so you were about 200 hundred feet away, generally, right?

THE COURT: No, he did not say generally. He says at times 200 feet, up to three blocks.

Q And as far as you know the silver unmarked car was between the truck and you, right?

A That is as far --

Q Going downtown.

A That is as far as I know.

Q That would have put him even closer than that 200 feet.

THE COURT: Or 300.

Q Or three hundred.

DEFENSE COUNSEL: Thank you, your Honor.

Q Or closer than three blocks; is that right?

THE COURT: The answer is yes.

A Yes, it was in between.

DEFENSE COUNSEL: Your Honor, I want to ask the Court for its help.

THE COURT: I merely wanted to comment that between his car and the truck was the unmarked car. The unmarked car was closer than he was.

DEFENSE COUNSEL: That is true, your Honor.

Q And then there came a time -- and, now, as to the route it took, would you go over it very quickly once more for me.

A It went south on Allen Street, west on Rivington Street, north on Forsythe Street, West on Houston Street, south on Lafayette.

Q All right, now, how long did that entire ride take? Would you guess, officer?

A Ten minutes, fifteen minutes.

Q Now, there came a time when the car, when the truck,and I assume you were behind him to some extent, and the other police car came to a junction of Centre and Lafayette; is that right?

A Going south. Center and Lafayette? Yes.

Q Right. Am I right?

A Yes, you are right, except there is no actual junction there.

Q It is sort of a --

A I don't know where they join. It is impossible to tell where they join.

THE COURT: They don't join, but Centre Street, I believe, stops at the north side of the Municipal Building.

THE WITNESS: Yes, and then it is also on the south side.

THE COURT: Yes, but right there --

Q All right, now, may I make reference to the defendant. As an officer, as you came down you came down in this direction, down Centre Street.

A Yes.

Q Now, at the intersection of Centre and Reade, is there a red light? Do you know?

A Yes, there is.

Q All right now, going further south, the next block south is Chambers Street; is that right?

A Yes.

Q Is there a red light at Chambers Street?

A Yes.

THE COURT: I may say this: Since the time of this incident, I think, or very recently, the entire lighting system, the placement of the lights had been changed there.

DEFENSE COUNSEL: Yes. Your Honor, I think it was. I think, however, the lighting system prevailed last week. This was only last Wednesday. It has not been changed, because --

THE COURT: In other words, this incident took place after the lights were changed.

DEFENSE COUNSEL: Yes, I believe so.

THE COURT: All right.

Q All right, when the truck moving south came to the light of the intersection of Reade and Lafayette, did it stop?

DISTRICT ATTORNEY: Your Honor, I will object to this question. They are not charged with a violation of going through a red light or anything like that.

THE COURT: I will take it subject to connection.

DEFENSE COUNSEL: Thank you, your Honor.

Q Did it stop?

A At that point I would say that I was at about Lafayette and Pearl Streets.

THE COURT: Just answer the question. Did it stop?

THE WITNESS: I don't know.

Q You don't know? When it reached the intersection of Lafayette and Chambers Street, did it stop for a red light there, if you know?

A I don't know.

Q Were the police officers lined up on both sides of the street, south of ReadeStreet and maybe just a bit north of Reade-- I mean police officers.

A I know there were police officers in the area. Exactly how they were displayed, I don't know.

Q But there were police officers in the area?

A Yes.

Q As a matter of fact, there were many, many police officers in the area.

A I don't know.

Q Do you know, or do you not know that Mr. Cannon was waved on the red light and told to go through? Do you know?

A I don't know that.

DISTRICT ATTORNEY: Objection, your Honor, unless the officer saw this he could not possibly know.

THE COURT: He said he does not know. I will allow the answer. Objection overruled.

Q Now, at this point south of Chambers Street, how far were you now behind the truck?

THE COURT: When you say "south of Chambers Street," I wish you would use a point of reference. How far south of chambers street?

DEFENSE COUNSEL: Oh, that would be south of Chambers, in between the area of the Municipal Building. It is, let's say, right at Chambers Street.

Q How far away were you behind when they were at Chambers Street?

A When they were at Chambers Street I was north of Reade.

Q You were about --

A Probably entering the intersection.

THE COURT: In other words, you were just about a block away; that would be about two or three hundred feet.

Q And then you are incapable -- Well, strike that. You don't know that police officers ordered the truck to park in a particular area. You don't know?

A No.

DISTRICT ATTORNEY: Objection, your Honor. I am objecting to the answer.

THE COURT: sustained. It is assuming a state of facts.

Q Now, when the truck parked in the manner in which you described you saw it, you say, I believe, that you parked your car about two hundred feet behind it; is that right?

A That is correct.

DISTRICT ATTORNEY: Your Honor, I think we went through that this morning, in clarifying.

THE COURT: He says two hundred feet. We understand the limitations revolving around these matters. It is a man's judgment against another, as to the judgment of distances.

Q Officer, what would you say the length of the courtroom would be, so that I have an understanding or knowledge of what you mean by two hundred feet?

THE COURT: How far is it?

A About 40 feet.

THE COURT: That is pretty accurate. I think this courtroom is about 60 feet; is it not? Does anybody know?

I think we used to have -- there used to be a diagram in the drawer, which would -- the courtroom is, from front to back, 60 feet; and from where the officer sits it would be about 30 feet, and you said it was about 40 feet.

Q So based on that approximation, you would say your car was about five times the length of the courtroom behind the truck; is that right, roughly, just a rough guess?

A Well, that is what I said before.

THE COURT: What do you say now?

A I would say about two times the size of the room.

Q And you were then parked north of the truck?

A North, yes.

Q And was the truck already parked when you arrived? Is that when you parked, or had you parked prior to the truck?

A The truck had parked prior to me, but I saw the truck when it parked.

Q Did you see police officers on the running boards of the truck?

A No.

Q Did you see a police officer directing the driver of the truck to park where it ended up?

A No.

Q You left -- You then left your car and walked towards the truck; is that right?

A That is correct.

Q How many police officers would you say you saw in that area, roughly?

THE COURT: At that area?

Q In the area of the truck.

THE COURT: At that time.

A The area of the truck?

Q Yes.

A Three, four maybe.

Q Three or four police officers?

A Yes.

Q How many police officers do you think you saw in the area of City Hall Park?

A Oh, at that point I could not be positive.

Q Could there have been about 30 policemen?

DISTRICT ATTORNEY: Your Honor, May I object to the question on the ground that it is indefinite as to which time.

Q As of this time.

THE COURT: Objection sustained. I think you have to use some frame of reference.

Q What time did you park your car, officer?

A At what time?

Q Yes. What time was it when you parked?

A I would say about 2:30.

Q Now, at 3:30 in the area of City Hall Park, specifically in the immediate area of the truck, how many policemen did you see there?

A Are you talking about 2:30?

Q Yes, at this time, sure.

A Well, from the point that I could see the truck, I would say about 3 or 4, maybe, 3 or 4 officers; that is all, right at the truck.

Q Now, as the truck was parking there were people on the sidewalk; is that right?

A That is correct.

Q And there -- they were walking back and forth; is that right?

A Are you saying when I got there?

Q No, as you noticed it; as you opened the door, as you approached the truck, yes.

A No, they were not walking.

Q I beg your pardon?

A They were not walking.

Q As you alighted from your car, did you see people walking?

A I could not see that well, because there were amounts of motor vehicles in front of me, and then there was a truck in front of me.

Q They could have been moving? They could have been walking?

A They could have been.

THE COURT: Did you see them walk?

THE WITNESS: No.

Q And it was at that time that you walked over to the truck; is that right?

A That is correct.

Q And you stood about a foot from the truck at one point there, looking up?

A At one point.

Q Is that right?

A Yes.

Q As the truck was heading south you were standing where, toward the City Hall Park or toward the street? What side of the truck were you on?

A I approached the truck from the right-rear side.

THE COURT: In other words, you were between the truck and City Hall?

THE WITNESS: Between the truck and City Hall; between me and the truck was the material.

Q Well, was the material already there when you approached?

A It was in the process of being put there, yes.

Q Well, there came a time that you were approximately a foot away from the truck; is that right?

A That is correct.

Q You were looking up; is that right?

A That is correct.

Q And the truck is panelled on the side; is that right?

A That is correct.

Q And you saw -- I think you described it as -- hands or something like that over the truck?

A That is correct.

Q At that time you didn't know which hands belonged to whom, did you?

DISTRICT ATTORNEY: Your Honor, I think the officer testified that he saw three particular defendants that were throwing the garbage.

THE COURT: He said he saw Freedman, Kaplan, and Gonzales. He thereafter saw there was one other.

DISTRICT ATTORNEY: He saw Bayer also on.

THE COURT: He thereafter saw bayer on the truck. He said Bayer was stooped over with his hands in the debris; is that correct?

THE WITNESS: That is correct.

Q Well, you did not see these people doing what was just described, as you approached, because the paneling forbids your looking over it. You could not look over the panel.

A I looked --

Q Yes or no, officer, please. You could not look over the panel, into the truck.

A I saw them.

THE COURT: Could you look over the panel of the truck?

THE WITNESS: Not from where I was standing, one foot away from the truck; I could not.

THE COURT: At that time.

THE WITNESS: At that time. I don't know which time he is referring to.

THE COURT: Now, you said, in other words, to clarify, you said you saw Freedman, Gonzalez, and Kaplan actually doingthis thing. Where were you when you saw them?

THE WITNESS: I was approaching the truck from the right rear.

THE COURT: How far from the truck?

THE WITNESS: Anywhere from the point I dismounted from the car up until the truck/this was all happening.

THE COURT: In other words, from the point where you dismounted from your car one hundred feet away, as you proceeded towards the truck you say you saw these things?

THE WITNESS: I could see these things.

THE COURT: But when you got to a point where you were one foot beside the truck --

THE WITNESS: All I could see then --

THE COURT: Then you could see the panel, and the panel prevented you from seeing more than hands; is that right?

THE WITNESS: That is correct.

CROSS - EXAMINATION

BY DEFENSE COUNSEL:

(continued)

Q Now, aside from the four, from the four defendants that you make reference to, is that, Kalb, Freedman, Gonzalez, and one other?

DISTRICT ATTORNEY: And Bayer.

DEFENSE COUNSEL: And Bayer.

Q Did you see any of the other defendants in the back of the truck?

A Yes.

Q You in fact saw all of the defendants in the back of the truck; is that right? Just yes or no.

A At one point.

Q Except Cannon?

A Except Cannon, yes.

Q But at some point you saw all the defendants in the back of the truck; is that right?

A Yes.

Q Did you see all the defendants handing out rubbish in the manner in which you described that Kaplan and Bayer did, and the other two, did you see?

DISTRICT ATTORNEY: If your Honor will excuse me, I object to the question.

THE COURT: Sustained. May I suggest that the proper form would be to ask him if he saw any, instead all. He may have seen some, but not all.

Q Do you know who Mr. Gordon is, by the way?

A Who?

Q Mr. Gordon.

A I know now who he is.

Q Will you point him out to me, please.

A The second man from the left, in the front.

Q Was Mr. Gordon in the back of the truck?

A Yes.

DISTRICT ATTORNEY: Your Honor, may I object to the question again and ask could counsel state at what point.

THE COURT: At which point?

DEFENSE COUNSEL: Your Honor, we are talking about the truck parked with rubbish.

THE COURT: No.

DEFENSE COUNSEL: That is the time I am referring to.

THE COURT: I wish you would say so.

Q At the time you say the rubbish was being removed, at that time, did you see Mr. Gordon in the truck?

DISTRICT ATTORNEY: Your Honor, I object again. I don't know whether the officer saw the rubbish being removed on two occasions; once he was one hundred feet away, and he saw three specific individuals. When he was closer, and to the right rear, of the truck, he saw other garbage coming out but could not identify --

THE COURT: At any time after this truck parked near City Hall Park, and from the time you left your patrol car, did you see Mr. Gordon in the truck.

Q At any time.

A I will not swear to Mr. Gordon being in the truck.

Q Therefore, now we have that as far as you know Cannon was not in the back of the truck nor was Gordon in the back of the truck; is that right?

A I don't know.

Q As far as you know you could not place them there; is that right?

A Yes.

Q You know Mr. Schaeffer?

A Yes.

Q Where is he?

A He is the third gentleman from the left.

Q At any time, at any interval, at any time during the time you left your car and proceeded toward the truck, did you see Schaeffer in the back of the truck?

A In the back of the truck?

Q In the back of the truck, in the bed of the truck.

A No.

Q So, therefore, Gordon, Schaeffer, and now -- and Gordon and Cannon and Schaeffer you did not see in the back; is that correct?

A Right, that is correct.

Q Now you say you saw these men , the four you mentioned -- I don't know the names again --

THE COURT: These four men you first saw unloading this rubbish when you were about one hundred feet away; is that right? He did not say. Let me point out there may be certain vagueness. So that we may understand, he said, beginning at a point of one hundred feet away, approximately one hundred feet away, when he left his radio car, from that point on until he got to a point one foot away, he saw these various defendants removing material.

Now, he could not say that he continued, I think, with any clarity, unless he says that he saw Freedman when he was 20 feet away or Gordon when he was 15 feet away or Kalb when he was 37 feet away or 75 feet away.

His general statement is that he saw these three. It is all at one time or at different intervals during the time that it took him to,to walk the one hundred feet.

DEFENSE COUNSEL: Yes, your Honor.

THE COURT: Now, if you can define it further, why, I think it would be to the advantage of everybody. But I don't see how you can.

Q All right, officer, then you went into the bed of the truck?

A That is correct.

Q And what happened then when you went into the bed of the truck? Will you tell me?

A I ordered them to stop throwing the material, and to dismount.

Q Then what happened?

A They stopped throwing the material, and I went off the truck.

Q Is it a fact, officer, that -- directing your attention once more to the conversation on Allen Street -- there came a time, I believe you said, that you were told that the stuff in the truck was going to be taken to the Municipal Building; is that right?

DISTRICT ATTORNEY: Objection, your Honor. I object because I think this is repetitious. I think we went through that as to what the officer was told.

THE COURT: Well, I will sustain the objection and say that the evidence heard by the Court was that he was told by -- that the stuff was going to be taken to the Municipal Building and around City Hall Park.

Q Now, when you knew this to be the case, did you talk to the other officers and tell them what was about to happen?

A When do you refer to?

DISTRICT ATTORNEY: I object to that, your Honor, as being vague.

Q Did you have a conversation? I will rephrase it.

THE COURT: Withdrawn. Rephrase it.

Q Did you talk to the other officer in the car?

THE COURT: The sergeant.

DEFENSE COUNSEL: No, that is not the sergeant.

THE COURT: What conversation do you mean?

DEFENSE COUNSEL: Officer -- who is he?

THE COURT: The operator of the car?

DEFENSE COUNSEL: Of his car.

Q Did you talk to him.

THE COURT: I think his name is (Mar-ka-ton) (phonetic.)

A Marcanton.

Q Did you talk to him?

A I said -- at what point is this. I talked to him. I mean --

Q I mean, after you learned, or after Cannon told you they were going to the Municipal Building with the stuff on the truck.

A I would say it was down around that area of 2:30. He said 2:30.

Q I am sorry, did you tell the sergeant -- did you tell Mr. Marcanton they were going to bring the stuff and show it to some official there?

A No.

DISTRICT ATTORNEY: Objection, your Honor, the officer never said that.

THE COURT: The officer did state that he was told that they were going to take it down to the Municipal Building and around City Hall to show it to some officials.

Q And you knew that among the things there, there was a live rat there? You saw it?

A Yes.

Q And you saw what you described as bed springs and other rubbish and debris?

A That is right.

Q Did you call Captain Leigh (phonetic) after you learned from Mr. Cannon that he was going to the Municipal Building?

A No, I did not.

Q Had you had instructions to call the precinct?

A I had instructions that when the truck --

THE COURT: Did you have instructions to call the precinct, yes or no?

THE WITNESS: Yes, not at that point.

Q All right, did you call the precinct?

A Not at that point.

THE COURT: At any time.

Q Well, at any time during this incident.

A No.

A No, no. Excuse me, I didn't call the precint. I asked for the superior officer's car to meet me at the Municipal Building, over the radio. This was done through communications.

Q And when did you ask for the superior officer's car to meet you?

A When I was at the -- when I was at the location.

Q You mean City Hall Park area or Allen Street?

THE COURT: Before or after these items were thrown? And was this before or after you stopped your car?

THE WITNESS: This was before I stopped the car.

THE COURT: Where were you, approximately, when you made this radio call?

THE WITNESS: Approximately between Reade and Pearl Streets.

THE COURT: And that would be about a minute or two before you stopped your car?

THE WITNESS: Correct.

DEFENSE COUNSEL: All right.

A

Q Now, what superior officer did you request to be there?

A Captain Leigh. (phonetic)

Q Anybody else?

A I knew he was with the sergeant.

THE COURT: Did you request anybody else?

THE WITNESS: No.

Q Now, you requested Captain Leigh to be there, because you were told to call Captain Leigh; is that right? You made the call through communications?

A Yes.

Q And the order to call Captain Leigh was given to you when? Was it prior to 1:45, prior to the time you came to Eldridge Street?

DISTRICT ATTORNEY: Objection, your Honor, on the ground of irrelevancy.

THE COURT: Overruled. I will take it subject to connection.

You made this call to Captain Leigh?

THE WITNESS: Yes.

THE COURT: This radio message pertained to an order, did it not?

A Yes.

THE COURT: When was this order given to you?

THE WITNESS: This order was given to me at the station house.

THE COURT: When, what time?

Q What time?

A Approximately 1:30.

Q Were you given any other orders at 1:30, at the station house, besides to call Captain Leigh?

A Yes.

Q What were the orders?

A "If it looks like they are going to start dumping the garbage, call me."

Q What other orders?

A That was all. I mean, all that I can remember.

Q Now, when you called Captain Leigh on the telephone, did you call him because to you it looked as if they were going to dump the garbage? Is that the reason you put the call through?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Well, if you would not have believed they were going to dump it, you would not have called.

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. He said he had orders to call him if the garbage were going to be dumped. Now, I think that is clear.

Q All right, now at that point, that is, when you made the call, nobody had dumped anything at that point; did they?

A No.

Q You could have at any time -- all right, I will rephrase it. When you were talking to Cannon and in the presence of the sergeant on Allen Street, did you at any time tell the sergeant or did you tell MacCardon that he could arrest them now? Did you ever say that "We could arrest them now"?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Overruled. I will take it subject to connection.

A No.

Q Well, after the conversation with Cannon, you knew where he was going and you knew what he was taking, moving a live rat. You knew that.

A I knew that.

DISTRICT ATTORNEY: I object to that question.

DEFENSE COUNSEL: Your Honor, I don't understand the objection, except to throw me off.

DISTRICT ATTORNEY: If I could explain the objection.

THE COURT: He has a right to object.

DISTRICT ATTORNEY: I object to the form, again. "You knew where you were going."

THE COURT: Counsel --

DEFENSE COUNSEL: It is cross-examination, your Honor.

DISTRICT ATTORNEY: The officer was told --

THE COURT: Counsel, let him state the ground of his objection. I will give you and he opportunities. You know the prosecution is going to be hemmed in. I am going to give you all the latitude I could possibly give you in the presentation of your theories, of questions.

DISTRICT ATTORNEY: The question, I think, goes to the state of mind of the officer, which is not relevant on this issue.

THE COURT: Sustained.

Q Did anybody say to you, officer, any superior, that if it appears that rubbish is going to be dropped, to arrest them. Did anybody say that, that if it appears, or words to that effect, or an order to that effect, in substance?

DISTRICT ATTORNEY: Your Honor, I object again, as being hearsay. This is a statement out of the blue sky, out of thin air, as to whether anybody said it; and if so, who said it.

THE COURT: He testified that he received a certain order. Now, in reference to that order, part of that order, you were ordered to arrest them if it would appear that they were going to dump refuse?

THE WITNESS: No, your Honor.

Q What was your order in relation to your conductwith this -- with this truck? What did they tell you to do?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. Let us go on.

DEFENSE COUNSEL: Your Honor, may we have a brief recess of about one minute?

THE COURT: We are going to quit at 4 o'clock. So, be as brief as you can. Of course, go ahead, as you wish.

DEFENSE COUNSEL: Thank you.

(Whereupon a short recess was declared by the Court)

DEFENSE COUNSEL: Thank you.

THE COURT: Are we ready to proceed?

DEFENSE COUNSEL: yes.

THE COURT: Mr. Kaplan, do you think you may be able to finish your portion of the cross-examination of this witness by 4 o'clock?

DEFENSE COUNSEL: Yes, your Honor.

CROSS - EXAMINATION

BY MR. KAPLAN:

(continued)

Q Officer, when you were travelling downtown, that is, south, and approached a point at or about the corner of Reade and Lafayette, did you see police officers lining the street? Or did you see policemen on the side of Lafayette Street, at that point?

THE COURT: May I say, if you remember, he said on direct examination, that there were many officers; is that correct? There were officers?

THE WITNESS: Yes.

Q At no time on the trip from Allen Street to City Hall Park was the truck out of your sight; was it?

A There were times it was out of my sight.

Q But in the main you saw the truck proceed downtown?

A Yes.

Q Were you in a position then to stop it at any time you wished? You knew where it was.

DISTRICT ATTORNEY: Objection, your Honor, as to where --

THE COURT: Overruled. I don't know how it is material. But I want to give you latitude to defend this case, if it is material. So I will overrule the objection.

DEFENSE COUNSEL: Thank you.

Q You could have stopped it; is that right?

THE COURT: He said, yes.

Q You did not stop the truck though, did you?

A I didn't.

DEFENSE COUNSEL: Excuse me just one moment.

Q When the truck stopped, officer, at the City Hall Park area, was there a police car on the side of the truck, if you remember, parked adjacent to it?

A I do not recall.

Q Do you recall how many police cars there were in the immediate area of the truck when you stopped yours? Were there any besides yours?

A I do not recall seeing any specific cars.

DEFENSE COUNSEL: Well --

THE COURT: Did you see any police vehicles?

THE WITNESS: I know where my car was.

THE COURT: Besides yours.

THE WITNESS: No.

THE COURT: other than yours you saw no other vehicles?

THE WITNESS: No.

THE COURT: Police vehicles, that is.

THE WITNESS: Yes.

Q Well, there was the unmarked car there, was it?

A I don't know where it was with reference to the truck at the time the truck stopped.

Q You don't know if the unmarked vehicle was there or not?

THE COURT: He said he did not know where it was.

DEFENSE COUNSEL: All right.

Q You knew, officer, from the time you were told by Cannon at Allen Street, that they intended to take this rubbish and show it to officials.

DISTRICT ATTORNEY: Objection, your Honor, repetitious.

THE COURT: Sustained.

Q Did you know, officer, when the rubbish was placed on the area on which you described, adjacent to the trucks, that it was not to be left there; did you know this?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained.

MR. KAPLAN: I have no further questions.

CROSS - EXAMINATION

BY MR. SCHIFFER:

Q Patrolman Brown, about how many policemen were in the area in which the truck stopped, at any time, while you were in that area, after you stopped your car?

THE COURT: You mean the natural number of people?

DEFENSE COUNSEL: Yes, your Honor, at the truck.

THE WITNESS: Not just at the truck, but in the immediate area, around that? I don't know that.

Q Could you estimate approximately how many?

A I know there was a detail down there. How many policemen it included, I don't know. I don't know.

THE COURT: Can you estimate the gross number of men you saw at one time while you were at the truck?

THE WITNESS: The only time I saw any amount of policemen was when we had the prisoners in a bus, and --

THE COURT: And what?

THE WITNESS: -- see out the window, and I could see there were others of many of the officers there.

THE COURT: Just one moment, as a frame of reference, I assume you refer to the period of time prior to the arrests?

DEFENSE COUNSEL: That is right, your Honor, from the time --

THE COURT: Prior to the arrest what was the greatest amount of policemen you saw at one time in or about the vicinity of the truck?

THE WITNESS: About ten.

Q Did you recognize any specific policemen who were there?

Can you identify the specific policemen who were there?

A Many of them I didn't know. There were traffic --

THE COURT: You are not answering the question. Did you recognize any that you know by name or assignment?

THE WITNESS: No.

Q Do you know what unit they came from?

DISTRICT ATTORNEY: Your Honor, I object to that question; as the officer could not identify the policemen he could not very well identify what unit.

THE COURT: Sustained. You may ask, "Do you know what unit was assigned to duty at that time and place?" Do you know?

THE WITNESS: I do know that there were men coming from all over the city at the time.

THE COURT: Do you know any specific unit?

THE WITNESS: I know Traffic A. was there.

Q Did you recognize any police officer sergeant or lieutenant at that time?

A Who was there?

THE COURT: He has already answered. He said no.

DEFENSE COUNSEL: All right.

Q At what time did you -- excuse me. I withdraw that. Did you at any time see the truck displacing a left-turn blinker?

THE COURT: During what --

DEFENSE COUNSEL: Excuse me?

THE COURT: He was with the truck for a half hour.

Q Between Reade Street and the place where the truck stopped, did you see a left-turn blinker on?

A No.

Q You didn't? Fine. Now at what time did you arrest Mr. Cannon?

A He was arrested -- I would put Mr. Cannon under arrest in the station house.

Q In the station house, at about what time?

A Oh --

THE COURT: Excuse me, did you order Mr. Cannon to come to the station house?

THE WITNESS: I did not, personally.

THE COURT: Did you take him into custody at any time prior to the time you arrived at the police station?

THE WITNESS: No.

THE COURT: You know how he got to the police station?

THE WITNESS: I can only assume that.

THE COURT: Do you know whether he was ordered to go to the police station by another officer?

THE WITNESS: That is, I can only assume that.

THE COURT: You have no personal knowledge?

THE WITNESS: No.

THE COURT: All you know is that there came a time when you saw Mr. Cannon at the police station.

THE WITNESS: Yes.

THE COURT: And you arrested him there?

THE WITNESS: Yes.

Q And he may have come voluntarily?

DISTRICT ATTORNEY: Objection, your Honor; it would be pure speculation on his part.

THE COURT: Sustained. He said he does not know how he got there.

Q You arrested him at the station?

A Yes, that is correct.

Q What did you arrest him for?

A For acting in concert with the other charge that was subsequently dropped since then, the other charge of 1434.

THE COURT: For violation of the vehicle and traffic Law, Section 1228, which was substituted.

Q You had no warrant to arrest him?

A No, I did not.

Q Are you aware that section 1434 had been repealed in 1957?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. It is not material at all. We have gone through all this.

Q Officer Brown, are you frequently in the two hundred block on Eldridge Street?

A Yes, I am.

Q How long have you been with reasonable frequency on that block?

DISTRICT ATTORNEY: Objection, your Honor, I think --

THE COURT: I will take it subject to connection. Please connect it immediately.

A About five years, six years.

Q Have you had occasion to go into the buildings on 203 and 215 Eldridge Street?

A Yes.

Q Do you know who the landlord is?

A No.

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. The answer is, "No." I guess that takes care of it.

Q Have you seen the places in those buildings from which the term you presently described came?

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained.

Q Will you please describe the buildings.

DISTRICT ATTORNEY: Objection, your Honor.

THE COURT: Sustained. If you would advise the Court the materiality of these questions, I would be pleased to consider the whole thing.

DEFENSE COUNSEL: Your Honor, the purpose of the defendants' -- the intent of the defendants was to show evidence of a grievance, to petition for the redress of that grievance, the grievance of the condition of certain buildings on Eldridge Street.

Consequently, the condition of those buildings, which also are similar to the conditions of similar buildings in various other buildings in the city, is material to the question as to the defendants' purpose in loading the truck and going to the Municipal Building.

Now, I don't see --

THE COURT: Well, the Court will take judicial notice that it is the defendants' right, as well as the right of any other citizen, to petition and demonstrate. But the Court will not try the case now as to the genuineness of their claim, because I don't think it enters into it, if their purpose was to go there and petition and to demonstrate in connection with their petition and to advise their grievances.

The Court cannot tell you the Court upholds the right of the defendant in so doing; and whether or not they were justified is not a matter to be determined in this Court. Whether their petition was a proper one, or whether it was justified, or whether their complaint had basis in fact, that is not the province of this Court.

I think I may further clarify the issue by saying that the right to petition always prevails. The right to demonstrate always prevails, but the corollary to that is that it must be done in a matter within the law.

Now, if that offers any guidance to you, then I have not wasted my time. But I want to make it clear to you I have not overruled the objection, and why I sustained the objection to your question.

DEFENSE COUNSEL: I respectfully except, your Honor, and in connection with that point, I wish to state that if there is an actual grievance, then it tends to support the contention of the defendants, that it was their intent to petition for redress.

Now, the fact is that if they were in the act of petitioning for redress, even if they had no grievance, they would still have the right to petition.

THE COURT: Of course, but whether they were justified in their petition, I don't know. No building is in conveyance in this trial, and it is not a matter which this Court must determine; and therefore I am sustaining the objection.

DEFENSE COUNSEL: Yes, your Honor.

THE COURT: I do say, however, that the Court recognizes the right of any citizen, and,of course, of these defendants to petition.

MR. KAPLAN: May it please the C ourt, in further evidence of this offer of proof that is being presented to your Honor, on the redress theory, may I say this: that to show the condition, the horrifying conditions of the buildings, not merely moralizing in itself, not merely making speeches, it goes to the point of intent, what they intended to do. Did they intend to commit disorderly conduct, or did they not? Because intent is a basic element of the crime -- of the offense.

What we want to show, your Honor, is that the intention was not that, but that it was a lwaful, legal intention. But that is only half of it, your Honor. The other side is what your Honor says: Your Honor is sitting to see whether a disorderly conduct took place or whatever their intention might have been before.

THE COURT: That is correct.

MR. KAPLAN: The offer of proof could go this way, your Honor; that the truck was heading to the Municipal Building, Commissioner Byrnes office. They were instructed by police officers not to go there. Physically were pushed.

THE COURT: Isn't that a question? Isn't that subject to proof?

MR. KAPLAN: For proof, I want to say that because that is the purpose of -- we don't know the name of the police officer itself. I cannot help you. I do not know that itself. I will say this. Excuse me, your Honor, I merely --

THE COURT: Let's --

MR. KAPLAN: I merely --

THE COURT: Let us confine ourselves to the question of whether or not it is permissible to prove the conditions in order to show whether or not they were justified in petitioning for their remedy of their grievances.

Now, when you speak of intent, that they intended to petition, the Court now says that if the defendants will take the stand or if there is any statement,and we can gather from the statements already made by this witness that they said they were going to take this stuff down to show it to the authorities at City Hall and the Municipal Building and intended to go around the City Hall, that it was their intent to petition a redress of their grievances, that, I say, has already had some support from the testimony of this officer.

Now, whether they intended to petition for redress is one thing that is not material on this trial. The question in this trial is did they intend to commit disorderly conduct; did they intend to breach the peace. That is separate and distinct from whether they intended to petition.

MR. KAPLAN: Yes, your Honor.

THE COURT: If we have that --

MR. KAPLAN: I have a different contention entirely.

THE COURT: Why this Court does not deem it relevant for testimony with regards to the condition of these buildings that you wish to offer, and that is not the basis of the courtroom.

DISTRICT ATTORNEY: I think at this point it would be a good pine to cure before your Honor recesses. This is a legal point that your Honor has just gotten into, and which I do not want to press unduly. But the question of this alleged defense, that is covered in Pages 8 and 9 of the Defendants' memorandum, which is directly to the point, that your Honor has been ruling on. And I am informed by the Commissioner of Buildings, Commissioner Byrnes, who telephoned me yesterday, and again this morning, that one of the defense counsel called him, and said he would require his presence; and, in substance, Mr. Byrnes said he told defense counsel that he had felt he had no relevant testimony to give in this case; but that if the Court required his presence, the formality of his presence, a subpoena will not be necessary. Now, apparently the Commissioner and his deputy commissioner are both subject to this agreement. I wonder if your Honor could be prevailed upon so that they will know that they have to come in or can go about their business, knowing that is no longer hanging over their heads.

THE COURT: May I say this, they may, the defense, in other words, to position their case may wish to present these men to swear them on the stand and offer their testimony, I think.

MR. SCHIFFER: Your Honor, the thing is that I spoke to Commissioner Byrnes, and he is perfectly willing to testify. He does not want to have his time wasted by having to sit during lengthy argument concerning admissibility. That was all he said. He is perfectly --

THE COURT: There is one thing, if you do want him, you arrange for a certain time.

MR. SCHIFFER: Well, I have already done actually a little more than what Mr. Kuh wants to have done. That is, I called Commissioner Byrnes office at the luncheon recess, and told his secretary that we won't need Commissioner Byrnes or his deputy today or tomorrow, but that we will call on tuesday.

THE COURT: It would be better on Tuesday. At this time I cannot deny the defendants' right to call.

DISTRICT ATTORNEY: I prefer this, your Honor: If the purpose is simply to have them here so an offer of proof may be made, the offer of proof may be made just as well in their absence, and avoid both of the top people at the Building Department sitting here during legal arguments.

I think the substance of the offer of proof is made in Pages 8 and 9 in the defendants' memorandum, and was orally stated in connection with the questions just asked this officer; and your Honor has ruled. Now is your Honor is informing defense counsel now that questions whether the Department of Building were doing their duty -- questions as to the extent of garbage on Eldridge Street and in particular houses on Eldridge Street, and that is not the issue in this case. Since I believe that is the purpose indicated in this memorandum for asking for Commissioner Byrnes to come; then, Commissioner Byrnes and his deputy can go about their business. The offer of proof can be made on the record. And they may be told that they are not needed.

I understand from both that neither was a witness to any incident here, and neither had any conversation with any of the officers whom the people have called or intend to call as witnesses. So they could not be witnesses as to the facts or as to prior inconsistent statements, and can only be witnesses as to what we submit and what your Honor has ruled on. Now, there are cases, and I don't have them here, but which I intend to get them for your Honor -- and I think maybe counsel will concede that they exist; that say a court can quash a subpoena if the subpoena is issued without any reasonable basis of expecting relevant testimony; and I think the only issue here, on the testimony here is, would the question of innocence of the laws as to

Eldridge Street Housing be relevant or not relevant in this trial, and that your Honor could rule upon.

THE COURT: They might issue a subpoena and then have it quashed.

MR. KUH: I think, for practical --

THE COURT: They may want to do it this way. In other words, I cannot at this time so direct the defense as to the tactics to suit the convenience of any one person or group of people.

MR. KUH: No question about that.

THE COURT: Of course, the suggestion you have made seems to be very, very sensible; but if they want to do it in another way --

MR. KUH: What I am suggesting, your Honor -- and I think counsel will agree with me on this. I trust he will. It may be considered -- if a subpoena was issued we are now moving to quash it.

MR. SCHIFFER: Your Honor, we have no ideas to inconvenience Commissioner Byrnes or his deputy Commissioner. On the other hand, we do expect to call them. And we feel that they obviously know that they are part, a material part, of our case; and, further, that they can add greatly to the fundamental surrounding circumstances in this situation; that the question of intent here can be established, in part, if we recognize what the people were planning to do as to the disorderly conduct. If they had a specific intent of going to a specific person, in an specific building, and they were prevented from doing that by being directed elsewhere, this can be established in part by showing what activities these people had engaged in previously in connection with Commissioner Byrnes and Gri-bits (phonetic) in connection with the condition of these buildings, to show, in other words, that all of the conduct that the defendants engaged in on that day was consistent with a peaceful,orderly petition of redress to particular people. That is why --

THE COURT: I think at this time I will rule. If the defendants wish to call either commissioner Byrnes or his assistant deputy commissioner, they have a right to do so, subject to any arrangements they may have made. But I wish to impress upon the defense counsel that as Mr. Kuh has stated, that both of these men are extremely busy men, and that they should not be hindered in any way from carrying on their normal day-to-day duties, and to make every effort to make some arrangement with them that will result in --

MR. KAPLAN: In other words, to just get them here --

MR. SCHIFFER: As I indicated, we have already gone beyond that; and we certainly feel that way.

MR. KUH: May I be heard for one more moment. I hope your Honor realizes that when I say that,a similar case was tried across the hall last week, and other city officials were subpoenaed, substantially, Stanley Lowell Cashman of the Commissioner of inter-group Relations, Madison Jones, of New York City Council, and others; and we pointed out to the Court that at that time the court had the authority, where a public official was subpoenaed, to make it discretionary of counsel as to what area, where the People said, as officers of the court, that these witnesses had no personal knowledge and had no resposibility as to the parties that were testifying; that the Court had the authority to inquire what areas this testifying was being elicited to cover; and if the Court was satisfied that those areas dealt with irrelevancies, the Court had the further power to quash the subpoena, rather than bringing city officials here simply to listen to legal argument and just give testimony as to their name, their address, and their public position.

Now, I would urge upon this Court that we do have a memorandum to the facts and to the law, so-called, given by defense counsel, unsolicited. On pages 8 and 9 they have counsel's very statement here -- just a moment -- and it indicates the areas in which these public officials are to be questioned.

And I do say that this Court has the authority to ask counsel to enumerate -- not give away details -- not give away details of tactics-- but to enumerate what areas these persons are being called upon to testify, in light of my statement, as an officer of this Court, that I am told that they have no direct testimony concerning the disorderly conduct or the blocking, littering, or what have you, of a roadway.

Now, I would urge, if the Court does not want to do it today because of the hour, I would -- I certainly do not appreciate this, but it simply goes much further than finishing at a convenient hour for Commissioner Byrnes and Commissioner Gri-bits (phonetic). It goes into the proper legality as to whether in any case a city official shall be bonded because a defense attorney, in good faith, says that"we are not concerned with what the defendant did; we are concerned with the motive with which he did it; and we want the city official here to show that the motive was a holy motive." Now, I suggest this could be abusive.

THE COURT: Mr. Kuh, I have ruled with relation to that that I will receive no evidence with regard to -- or justification for the petition.

However, there is another phase that has just been mentioned, which indicates that because of prior activity theremay be testimony that these people had some arrangement to see Mr. Byrnes or Mr. Gri-bits (phonetic). That is what I understand, and that, of course, nothing is clear-cut. But the indications are that they want to show that these people were going to see Mr. -- Commissioner Byrnes or Commissioner Gri-bits.

And it is for that testimony only that I am going to say that they may bring Mr. Byrnes here, and not with regard to motive.

MR. KUH: But, if it pleases the Court, Mr. Schiffer has notsaid that they had a prior arrangement to visit Mr. Byrnes or Mr. (Gri-bits,) and I say that even if they did have a prior arrangement, unless Mr. Schiffer is ready to say that Mr. Byrnes or Mr. Gri-bits if called to testify would testify that they gave permission to dump garbage on the street and to create a disorderly conduct; then, I say, that if they had 43 appointments with Mr. Gri-bits and Mr. Byrnes in their offices on the 14th or whatever floor on the Municipal Building, this could in no way bear on the factual question of whether these defendants dumped garbage on the street and created a disorder in the street; and I say it can only be on the question of motive, whether because they felt Mr. Byrnes or Mr. Gri-bits were doing an inadequate job or some such thing and wanted to --

MR. SCHIFFER: At this point, your Honor, there is nothing in the record to support--

THE COURT: Of course, the indications are -- and I am not prejudging this -- that the theory of the prosecution would be that these people went with this truck to this area and dumped this garbage. In opposition thereto --

MR. KUH: If I may interfere, that is not necessarily the theory of the People. The People need not show what their purpose is, and we are not interested in what their purpose was, until in fact they started. We are not even interested in what their intent might have been to parade up Broadway with the garbage truck; to say, "Look at the garbage "we have." But the intent comes in at the moment they decided to dump garbage. What their intent was for two minutes before, or ten minutes before, or two hours before, we suggest is irrelevant, and will not offer proof concerning the question.

Did the defendants intend the natural consequences of what were in fact their acts? And that is where intention is important, simply, what did they intend, if and when our proof shows that they started dumping bed springs and other things on the street.

MR. SCHIFFER: If Mr. Kuh had been here this afternoon he would realize that there is nothing in the record at this stage to support any charge of dumping garbage or anything.

THE COURT: He has been throwing --

MR. SCHIFFER: There is nothing inconsistent.

THE COURT: Mr. Schiffer, I assume Mr. Kuh says dumping garbage. I believe he refers to this item of testimony, wherein it was shown that the defendants, at least four of the defendants, threw material from the truck; whether it was debris, or garbage, or springs, or what, they threw it over the side, into the gutter, and in a portion of the sidewalk where the curb cut was. That is what Mr. Kuh is arguing.

MR. KUH: That is right.

THE COURT: However, gentlemen, let me say this: I am not prepared to rule one way or another on that matter. I will take it under advisement.. The court will adjourn.

MR. KAPLAN: Your Honor, same bail conditions?

THE COURT: The same bail conditions will exist. This court will reconvene -- this case will continue Tuesday, at 9:30 a.m. in this courtroom.

As to the defendants on parole, I wish to advise them that if they fail to appear on Tuesday, September 3, they will be charged with an additional charge of parole jumping. Anything else, gentlemen? All witnesses, likewise, are to return. Will you bring the witnesses in? Does anybody want me to ask the witnesses to return? All right.

MR. KAPLAN: Would your Honor require their reattendance on Tuesday?

THE COURT: As to those, call them in. You have to come back here tuesday. Just one moment. Who is the witness you wish, that you subpoenaed, or the witnesses? Have you subpoenaed them? All right, you gentlemen are all directed to reappear in this court at 9:30 this coming Tuesday, same room.

* * *

THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF MINUTES IN THIS CASE.
BY: Alejandro Gonzalez, CSR
W. GREGORY LEWIS, 9/6/65
Official Court Reporter

~~At an Appellate Term of the Supreme~~
~~Court of the State of New York,~~
~~First Department, held at the Court-~~
~~house thereof, in the City, City~~
~~and State of New York, on the 5th~~
~~day of February, 1964.~~

~~P R E S E N T :~~

~~HON.~~

~~Justice Presiding.~~

SUPREME COURT OF STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

- -x

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

GEORGE CANNON,

Defendant-
Appellant

- -x

On reading the affidavit of George Schiffer sworn to the 3rd day of ~~January~~ February, 1964, and sufficient cause therefor appearing, it is ORDERED, that the People show cause at a term of this Court to be held at the County Court House at Pearl and Centre Streets in the City of New York on the 10th day of Feb. , 1964, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard why an order should not be made vacating the order of dismissal and reinstating defendant's appeal and restoring him to the Calendar and continuing the defendant on bail until after the final determination of the appeal, and why the defendant should not have such other and further relief as may be just; and his position being supported by the numerous lesser sentences imposed in similar cases.

Therefore, it is respectfully requested that the relief prayed be granted, as more fully described herein and let execution of the sentence imposed be stayed.

Let service of a copy of this order to show cause and the affidavits and exhibits annexed hereto be made on the office of Hon. Frank Hogan, District Attorney, New York County, and on the office of the Clerk of the Criminal Court of the City of New York and on the office of Jack Meyer, 130 White Street, Bonding Company, at their New York County offices, on or before the 6th day of Feb. 1964 be deemed good and sufficient service.

DATED: NEW YORK, NEW YORK
February 5th, 1964

~~E N T E R~~

/s/ UCHJ

~~J.S.C.~~

JUSTICE APPELLATE TERM
SUPREME COURT FIRST DEPT.

HECHT, J.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- -X

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

vs.

GEORGE CANNON,

Defendant-Appellant

- -X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GEORGE SCHIFFER, being duly sworn, deposes and says:

1. I am the attorney for the defendant herein. I make this affidavit in support of defendant's application for an order to show cause why the order dismissing his appeal should not be vacated and the appeal reinstated and to stay his commitment.

2. The appeal was dismissed on January 13, 1964 for failure to perfect the appeal under Rule 3, Appellate Term of the Supreme Court, First Department, due to an inadvertent error because of the many related cases that were being defended simultaneously.

3. The relevant circumstances are as follows: Defendant was convicted of disorderly conduct. Defendant acted as part of a peaceful civil rights demonstration. There are serious and meritorious constitutional questions inherent in the situation. A certificate of reasonable doubt was secured.

Thereafter, numerous similar cases arose, involving several hundred defendants. A number of volunteer counsel appeared at the trials, including myself. It was, however, generally understood that other counsel would undertake the laboring oar on the appeals.

Consequently, research was undertaken by various attorneys, including myself, toward the preparation of appeals. In addition, the transcripts in a number of cases have been ordered and other steps toward the prosecution of the appeals have been taken.

At the conclusion of the summer, when the pace of arrests and trials diminished, counsel in many of the cases concluded that, unless an orderly appellate procedure were developed, a great and unnecessary burden would be placed upon the Courts, the People and defendants.

Accordingly, defendant's counsel and others initiated conferences with the District Attorney's Office to determine the feasibility of an orderly procedure.

Specifically, discussions took place, and other discussions are planned to accomplish the following:

(a) To select a limited number of cases presenting the significant issues, the remaining cases being bound by the outcome; and

(b) to postpone, subject to the Court's consent, all proceedings in all the cases until the determination of the selected cases; and

(c) to prosecute the selected appeals as rapidly as possible, consistent with the convenience of the Court and the commitments of counsel for the People and defendants.

H. Richard Uviller, Esq., chief of the Appeals Bureau of the District Attorney's Office, New York County, who has participated at the conferences, has authorized me to refer to them.

4. In view of the overall situation and the discussions in progress, I erroneously assumed that no immediate action was required with reference to this particular appeal. I did not become aware of the Court's order of dismissal until the evening of January 13, 1964. I was subsequently informed by the Appellate Term of the Supreme Court, First Department that the case was dismissed pursuant to the provisions of Rule 3 of this Court.

5. I spoke to Mr. Uviller to advise him of this application. He authorized me to state that he would consent to the reinstatement of this appeal.

6. The appeal of the defendant George Cannon involves significant constitutional questions, particularly on the questions of free speech and public assembly.

7. Since the reinstatement of the appeal is consented to by the People; since the dismissal resulted from my inadvertence; since every effort speedily to prosecute the appeal in an orderly manner is being made; since a certificate of reasonable doubt was granted and there are substantial issues of law meriting the attention of this Court, it is respectfully requested that the relief prayed be granted, and for all of which no previous application has been made.

Sworn to before me the
3rd day of February, 1964
Barry Lee Cohen
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1964

/s/ G. Schiffer

CRIMINAL COURT CITY OF NEW YORK
COUNTY OF NEW YORK

---x

PEOPLE OF THE STATE OF NEW YORK

Respondent,

- against -

GEORGE CANNON

Defendant-Appellant.

---x

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE, that the defendant herein hereby appeals from the judgment of conviction rendered against him in this Court for violation of Section 1220 Vehicle & Traffic Law on the 5th day of September 1963, and from each and every intermediate order therein made and more particularly from the sentence herein imposed on the same day by Hon. Judge George S. Rader, said sentence being as follows:

Dated : New York, New York

Yours, etc.

SCHIFFER & COHEN, ESQS.
Attorneys for Defendant
Office & P.O. Address
40 East, 49 Street,
New York 17, N.Y.

TO: HON. FRANK S. HOGAN, District Attorney
New York County
155 Leonard Street
New York 13, New York

CLERK, CRIMINAL COURT NEW YORK COUNTY
100 Centre Street,
New York 13, New York

~~At an Appellate Term of the Supreme~~
~~Court of the State of New York,~~
~~First Department, held at the Court-~~
~~house thereof, in the County, City~~
~~and State of New York, on the 5th~~
~~day of February, 1964.~~

~~PRESENT~~:

~~HON.~~

~~Justice Presiding~~.

SUPREME COURT OF STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

- x

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Respondent,

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ANTONIO VASQUEZ, STEPHEN GORDON,

Defendants-
Appellants

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DATED: NEW YORK, NEW YORK ~~ENTER~~
February 5th, 1964

/s/ UCH J

~~J.S.C.~~

JUSTICE APPELLATE TERM
SUPREME COURT : FIRST DEPT.

HECHT, J.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

JON SCHAEFFER, ALEXANDER BOYER,
ANTONIO VASQUEZ, STEPHEN GORDON,

Defendants-
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) ss.:
COUNTY OF NEW YORK)

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H. Richard Uviller, Esq., chief of the Appeals Bureau of the District Attorney's Office, New York County, who has participated at the conferences, has authorized me to refer to them.

4. In view of the overall situation and the discussions in progress, I erroneously assumed that no immediate action was required with reference to these particular appeals. I did not become aware of the Court's order of dismissal until the evening of January 13, 1964. I was subsequently informed by the Appellate Term of the Supreme Court, First Department that the cases were dismissed pursuant to the provisions of Rule 3 of this Court.

5. I spoke to Mr. Uviller to advise him of this application. He authorized me to state that he would consent to the reinstatement of these appeals.

6. The appeals of the defendants Jon Schaeffer, Alexander Boyer, Antonio Vasquez and Stephen Gordon involve significant constitutional questions, particularly on the questions of rights of free speech and public assembly.

7. Since the reinstatement of the appeals is consented to by the People; since the dismissal resulted from my inadvertence; since every effort speedily to prosecute the appeals in an orderly manner is being made; since a certificate of reasonable doubt was granted and there are substantial issues of law meriting the attention of this Court, it is respectfully requested that the relief prayed be granted, and for all of which no previous application has been made.

Sworn to before me the
3rd day of February, 1964
Barry Lee Cohen
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1964

/s/ D Schiffer

CRIMINAL COURT CITY OF NEW YORK
COUNTY OF NEW YORK

---x

PEOPLE OF THE STATE OF NEW YORK

Respondent,

NOTICE OF APPEAL

- against -

JON SCHAEFFER, ALEXANDER BOYER, ANTONIO VASQUEZ, STEPHEN GORDON.

Defendants-Appellants.

---x

SIRS:

PLEASE TAKE NOTICE, that the defendants herein hereby appeal from the judgment of conviction rendered against them in this Court for violation of Section 722, subdivision 2 and 3 Penal Law on the 5th day of September 1963, and from each and every intermediate order therein made and more particularly from the sentence herein imposed on the same day by Hon. Judge George S. Rader, said sentence being as follows:

Dated: New York, New York

Yours, etc.

SCHIFFER & COHEN, ESQS,
Attorneys for Defendants
Office & P.O. Address
40 East, 49 Street,
New York, N.Y.

TO: HON. FRANK S. HOGAN, District Attorney
New York County
155 Leonard Street,
New York 13, New York

CLERK, CRIMINAL COURT NEW YORK COUNTY
100 Centre Street,
New York 13, New York

At an Appellate Term of the Supreme
Court of the State of New York,
First Department, held at the Court-
house thereof, in the County, City
and State of New York, on the 5th
day of February, 1964.

~~P R E S E N T :~~

~~HON.~~

~~Justice Presiding.~~

SUPREME COURT OF STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

- X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

JOEL FREEDMAN, JEFFREY KALB and ELEUTERIO GONZALEZ,

Defendants-Appellants

- X

On reading the affidavit of George Schiffer sworn to the 3rd day of ~~January~~ February, 1964, and sufficient cause therefor appearing, it is ORDERED, that the People show cause at a term of this Court to be held at the County Court House at Pearl and Centre Streets in the City of New York on the 10th day of Feb, 1964, at 10:00 o'clock in the fore-noon, or as soon thereafter as counsel can be heard why an order should not be made vacating the order of dismissal and reinstating defendants' appeals and restoring them to the Calendar and continuing the defendants on bail until after the final determination of the appeals, and why the defendants should not have such other and further relief as may be just; and their position being supported by the numerous lesser sentences imposed in similar cases.

Therefore, it is respectfully requested that the relief prayed be granted, as more fully described herein and let execution of the sentences imposed be stayed.

Let service of a copy of this order to show cause and the affidavits and exhibits annexed hereto be made on the office of Hon. Frank Hogan, District Attorney, New York County, and on the office of the Clerk of the Criminal Court of the City of New York and on the office of Jack Meyer, 130 White Street, Bonding Company, at their New York County offices, on or before the 6th day of February, 1964 be deemed good and sufficient service.

DATED: NEW YORK, NEW YORK
FEBRUARY 5th, 1964

~~E N T E R~~

UCH

~~J.S.C.~~
Justice Appellate Term
Supreme Court First Dept

HECHT, J.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- -X

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

vs.

JOEL FREEDMAN, JEFFREY KALB and ELEUTERO GONZALEZ,

Defendants-
Appellants.

- -X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GEORGE SCHIFFER, being duly sworn, deposes and says:

1. I am the attorney for the defendants herein. I make this affidavit in support of defendants' application for an order to show cause why the order dismissing their appeal should not be vacated and the appeals reinstated and to stay their commitment.

2. The appeal was dismissed on January 13, 1964 for failure to perfect the appeal under Rule 3, Appellate Term of the Supreme Court, First Department, due to an inadvertent error because of the many related cases that were being defended simultaneously.

3. The relevant circumstances are as follows: All defendants were convicted of disorderly conduct. Defendants acted as part of a peaceful civil rights demonstration. There are serious and meritorious constitutional

questions inherent in the situation. A certificate of reasonable doubt was secured.

Thereafter, numerous similar cases arose, involving several hundred defendants. A number of volunteer counsel appeared at the trials, including myself. It was, however, generally understood that other counsel would undertake the laboring oar on the appeals.

Consequently, research was undertaken by various attorneys, including myself, toward the prepartion of appeals. In addition, the transcripts in a number of cases have been ordered and other steps toward the prosecution of the appeals have been taken.

At the conclusion of the summer, when the pace of arrests and trials diminished, counsel in many of the cases concluded that, unless an orderly appellate procedure were developed, a great and unnecessary burden would be placed upon the Courts, the People and defendants.

Accordingly, defendants' counsel and others initiated conferences with the District Attorney's Office to determine the feasibility of an orderly procedure.

Specifically, discussions took place, and other discussions are planned to accomplish the following:

(a) To select a limited number of cases presenting the significant issues, the remaining cases being bound by the outcome; and

(b) to postpone, subject to the Court's consent, all proceedings in all the cases until the determinatio of the selectd cases; and

(c) to prosecute the selected appeals as rapidly as possible, consistent with the convenience of the Court and the commitments of counsel for the People and defendants.

H. Richard Uviller, Esq., chief of the Appeals Bureau of the District Attorney's Office, New York County, who has participated at the conferences, has authorized me to refer to them.

4. In view of the overall situation and the discussions in progress, I erroneously assumed that no immediate action was required with reference to these particular appeals. I did not become aware of the Court's order of dismissal until the evening of January 13, 1964. I was subsequently informed by the Appellate Term of the Supreme Court, First Department that the cases were dismissed pursuant to the provisions of Rule 3 of this Court.

5. I spoke to Mr. Uviller to advise him of this application. He authorized me to state that he would consent to the reinstatement of these appeals.

6. The appeals of the defendants Joel Freedman, Jeffrey Kalb and Eleuterio Gonzalez involve significant constitutional questions, particularly on the questions of rights of free speech and public assembly.

7. Since the reinstatement of the appeals is consented to by the People; since the dismissal resulted from my inadvertence; since every effort speedily to prosecute the appeals in an orderly manner is being made; since a

certificate of reasonable doubt was granted and there are substantial issues of law meriting the attention of this Court, it is respectfully requested that the relief prayed be granted, and for all of which no previous application has been made.

Sworn to before me the
3rd day of February, 1964
Barry Lee Cohen
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1964

/s/ G. Schiffer

CRIMINAL COURT CITY OF NEW YORK
COUNTY OF NEW YORK

---x

PEOPLE OF THE STATE OF NEW YORK

Respondent,

NOTICE OF APPEAL

- against -

JOEL FREEDMAN AND JEFFREY KALB AND EULETERIO GONZALEZ
also known as EULETERIO GONZALEZ RODRIGUEZ
Defendants-Appellants.

---x

SIRS:

PLEASE TAKE NOTICE, that the defendants herein hereby appeal from the judgment of conviction rendered against them in this Court for violation of Section 1220 Vehicle & Traffic Law, and violation of Section 722, subdivision 2 and 4, Penal Law on the 5th day of September 1963, and from each and every intermediate order therein made and more particularly from the sentence herein imposed on the same day by Hon. Judge George S. Rader, said sentence being as follows:

Dated: New York, New York

Yours, etc.

SCHIFFER & COHEN, ESQS.
Attorneys for Defendants
Office & P.O. Address
40 East, 49 Street,
New York 17, N.Y.

TO: HON. FRANK S. HOGAN, District Attorney
New York County
155 Leonard Street,
New York 13, New York

CLERK, CRIMINAL COURT NEW YORK COUNTY
100 Centre Street,
New York 13, New York

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 12
8 BANK STREET
PEEKSKILL
NEW YORK 10566

(LOCAL BOARD STAMP)

IN REPLY, REFER TO:

April 13, 1967

Mr. Steven M. Nagler
Scholarship Defense & Educational Fund
for Racial Equality
150 Nassau Street
New York, N.Y.

Subject: BOYER, Alexander B.
SS# 30 12 43 944

Dear Mr. Nagler:

In a recent questionnaire, the above subject registrant of this board reported that he was convicted for Disorderly Conduct on September 5, 1963, and was sentenced to serve five days. We understand that inlieu of serving his sentence, he was released on bail while you, his attorney, was going to process an eappeal of conviction.

Since this appeal was scheduled to have been started in 1963 and is approximately four years old, may we kindly be adviseddof either the disposition or status of this legal action.

A self addressed envelope is enclosed for your convenience in reply. An early reply would be appreciated as this information is necessary for classification purposes.

By Direction:
Local Board No. 12

Marie Mastrianna

(Miss)Marie Mastrianna, Ass't Clerk

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 12
8 BANK STREET
PEEKSKILL
NEW YORK 10566

(LOCAL BOARD STAMP)

IN REPLY, REFER TO:

April 28, 1967

Mr. Steven M. Nagler
Scholarship Defense & Educational Fund
for Racial Equality
150 Nassau Street
New York, N.Y.

Subject: BOYER, Alexander B.
SS# 30 30 12 43 944

Dear Mr. Nagler:

On April 13, we wrote you regarding the above subject registrant's current civil status. To date, we have received not reply.

Would you please attend to this matter as the information is needed for classification purposes.

By Direction:
Local Board No. 12

Marie Mastrianna
(Miss)Marie Mastrianna, Ass't Clerk

May 2, 1967

Miss Marie Mastrianna, Assistant Clerk
Selective Service System
Local Board No. 12
8 Bank Street
Peekskill, New York 10566

Re:BOYER, Alexander B. - SS #30-30 12-43-944

Dear Miss Mastrianna:

Please pardon my delay in answering your letter of April 13th. Your information regarding the case of *People* v. *Boyer* is completely correct. Boyer was convicted of violating § 722 of the Penal Law and § 1220 of the Vehicle and Traffic Law along with seven others in September, 1963 before the Criminal Court of the City of New York. An appeal to the Appellate Term of the Supreme Court is being processed by me. I do now represent Mr. Boyer.

A substantial part of the unconscionable delay which has occurred in this case resulted from the fact that an order allowing the defendants - appellants to procede *in FORMA PAUPERIS* entered by the Appellate Term was not acted upon for a substantial period of time. The minutes of trial took an unusually long time for the court stenographer to transcribe.

The appeal is still pending before the court and we do plan to prosecute it as soon as is reasonably practicable.

If I may be of any further assistance to you please do not hesitate to call upon me.

Very truly yours,

Stephen M. Nagler

SMN:n

546

STATe of New York vs Cannon, George eT al, 1965-1966 - April, 1966

([illegible] appeal as Poor Persons)

State Historical Society of Wisconsin

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

GEORGE CANNON, ELEUTERIO GONZALEZ,
JOEL FREEDMAN, JEFFREY KALB, JON
SCHAEFFER, ALEXANDER BOYER, ANTONIO
VASQUEZ and STEPHEN GORDON,

Defendants-Appellants.

- X

On reading the affidavit of George Schiffer sworn to the 2nd day of January, 1964, and sufficient cause therefor appearing, it is ORDERED, that the People show cause at a term of this Court to be held at the County Court House at Pearl and Centre Streets in the City of New York on the day of January, 1964, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard why an order should not be made vacating the order of dismissal and reinstating defendants' appeals and restoring them to the Calendar and continuing the defendants on bail until after the final determination of the appeals, and why the defendants should not have such other and further relief as may be just; and their position being supported by the numerous lesser sentences imposed in similar cases.

Therefore, it is respectfully requested that the relief prayed be granted; and that pending the reinstatement of the above appeals to the calendar, as more fully described herein, let execution of the sentences imposed be stayed, and for all of which no previous application has been made.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

George Cannon, Eleuterio Gonzales, Joel Freedman, Jeffrey Kalb, Jon Schaeffer, Alexander Boyer, Antonio Vasquez and Stephen Gordon,

Defendants-Appellants

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

George Schiffer, being duly sworn, deposes and says:

1. I am the attorney for the defendants herein. I make this affidavit in support of defendants' application for an order to show cause why the order dismissing their appeal should not be vacated and the appeals reinstated and to stay their commitment.

2. The appeal was dismissed on January 13, 1964 for failure to bring the same to a hearing prior to the end of the second term at which it might have been noticed and heard after the September term.

3. The relevant circumstances are as follows: All defendants except Cannon were convicted of disorderly conduct. Cannon was convicted under Sec. 1220 of the Vehicle and Traffic Law. Defendants acted as part of a peaceful civil rights demonstration. There are serious and meritorious constitutional questions inherent in the situation. A certificate of reasonable doubt was secured.

Thereafter numerous similar cases arose, involving several hundred defendants. A number of volunteer counsel appeared at the trials, including myself. It was, however, generally understood that other counsel would undertake the laboring oar on the appeals.

Consequently, research was undertaken by various attorneys, including myself, toward the preparation of appeals. In addition, the transcripts in a number of cases have been ordered and other steps toward the prosecution of the appeals have been taken.

At the conclusion of the summer, when the pace of arrests and trials diminished, counsel in many of the cases concluded that, unless an orderly appellate procedure were developed, a great and unnecessary burden would be placed upon the Courts, the People and defendants.

Accordingly, defendants' counsel and others initiated conferences with the District Attorney's Office to determine the feasibility of an orderly procedure.

Specifically, discussions took place, and other discussions are planned to accomplish the following:

(a) To select a limited number of cases presenting the significant issues, the remaining cases being bound by the outcome; and

(b) to postpone, subject to the Court's consent, all procedings in all the cases until the determination of the selected cases; and

(c) to prosecute the selected appeals as rapidly as possible, consistent with the convenience of the Court and the commitments of counsel for the People and defendants.

H. Richard Uviller, Esq., chief of the Appeals Bureau of the District Attorney's Office, New York County, who has participated at the conferences, has authorized me to refer to them.

4. In view of the overall situation and the discussions in progress, I erroneously assumed that no immediate action was required with reference to these particular appeals. I did not become aware of the Court's order of dismissal until the evening of January 13, 1964. I was unaware that my failure to make application to the Court for an extension of time would result in automatic dismissal of these appeals.

5. I spoke to Mr. Uviller to advise him of this application. He authorized me to state that he would consent to the reinstatement of these appeals.

6. The appeals of the defendants George Cannon, Eleuterio Gonzalez, Joel Freedman, Jeffrey Kalb, Jon Schaeffer, Alexander Boyer, Antonio Vasquez and Stephen Gordon incolve significant constitutional questions, particularly on the questions of rights of free speech and public assembly.

7. Since the reinstatement of the appeals is consented to by the People; since the dismissal resulted from my inadvertence; since every effort speedily to prosecute the appeals in an orderly manner is being made; since a certificate of reasonable doubt was granted and there are substantial issues of law meriting the attention of this Court, it is respectfully requested that the relief prayed be granted, and for all of which no previous application has been made.

Sworn to before me the
20th day of January, 1964.

Barry Lee Cohen
Notary Public

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1964

SUBMITTED BY: STEPHEN M. NAGLER, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM
......................................x

PEOPLE OF THE STATE OF NEW YORK,

Respondent

- against -

Cal #
638

GEORGE CANNON,

Defendant-Appellant.

......................................x

BRIEF OF APPELLANT

GEORGE SCHIFFER, ESQ.
Attorney for Appellant
Office & P. O. Address
40 East 49th Street
New York, New York 10038

By: STEPHEN M. NAGLER, ESQ.
c/o CORE
Office & P. O. Address
38 Park Row
New York, New York 10038

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THE CONVICTION OF APPELLANT
RESTED UPON "NO EVIDENCE"
AND SO WAS A DENIAL OF DUE PROCESS.

Conclusion.................................. 3

STATEMENT OF FACTS

Appellant was the driver of a truck carrying broken furniture and other articles collected at Eldridge Street in the county and City of New York. The material was to be delivered to the buildings Commissioner of the City of New York as a protest against slum conditions in the area.

Although there is some evidence in the record that others may have unloaded some of the material from the truck, there is no evidence that the appellant did anything bbut drive the truck. Not the slightest indication appears in the record that the appellant committed any act punishable under this or any statute.

STATEMENT OF THE CASE

Appellant was arrested with 10 others and charged with violating § 1220 of the vehicle and traffic law. He was tried on August 29, and September 3, 4, & 5, 1963 before Hon. George S. Rader, Judge of the Criminal Court of the City of New York, County of New York and found guilty. He was sentenced on September 5, 1963 to 10 days in the workhouse. Notice of Appeal was filed on or about September 9, 1963, and the Appellant was released on a Certificate of Reasonable Doubt. Shortly thereafter a stipulation was entered into adjoining the appeal in this case pending the disposition of People V. Penn

A motion was filed by appellant on or about May 19, 1965 seeking permission to appeal as a poor person. The motion was granted and an order entered appointed George Schiffer, Esq. as counsel without remuneration, and ordering the preparation of the minutes without cost to appellant. Although the case was set down for the September term, the minutes were not filed until November 12th, 1965.

POINT I

THE CONVICTION OF APPELLANT RESTED UPON "NO EVIDENCE" AND SO WAS A DENIAL OF DUE PROCESS.

The appellant was convicted on evidence indicating nothing more than that he drove a truck loaded with miscellaneous articles characterised by the prosecution as "rubbish". In fact the appellant was arrested before anything was unloaded from the truck by anyone present.

In order to violate Vehicle & Traffic Law § 1220, a person must:

> "...Throw, dump, deposit or place, or cause to be thrown, dumped, deposited or placed upon any highway... . any refuse, trash... (etc.)"..

No evidence of any of these acts appears in the record. If there had been some indication that Appellant, ordered or signalled that rubbish be dumped, substantial issues would arise, but no indication of any such order or signal or other conduct on the part of appellant appears.

As the Supreme Court stated in Thompson v. City of Louisville, 362 U S 199, 206, 80 S Ct 624, 629 (1960):

> "Just as conviction upon a charge not made would be sheer denial of due process), so is it a violation of due process to convict and punish a man without evidence of his guilt. "See also: Bouie v. City of Columbia, 378 U S 347, 84 SCt 1697 (1964).

CONCLUSION

The conviction of Defendant-Appellant for violation of § 1220 of the Vehicle & Traffic Law should be reversed and the complaint dismissed.

By : Stephen M. Nagler

Stephen M. Nagler, Esq.
Associate to George Schiffer, Esq.
c/o CORE
38 Park Row
New York, New York 10038

Respectfully, submitted,

George Schiffer, Esq.
Attorney for Defendant- Appellant
40 East 49th St.
New York, New York

Argued by
ALAN F. LEOBOWITZ

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

GEORGE CANNON, :

Defendant-Appellant. :

- x

RESPONDENT'S BRIEF

FRANK S. HOGAN
District Attorney
New York County

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

GEORGE CANNON, :

Defendant-Appellant. :

- x

RESPONDENT'S BRIEF

Statement

This is an appeal from a judgment of the Criminal Court of the City of New York, rendered September 5, 1963, convicting the defendant, after a trial (RADER, J.) of depositing refuse on a highway (Veh. & Traf. Law §1220). The defendant was sentenced to 10 days in the Workhouse.

THE EVIDENCE CONSIDERED

The trial testimony showed that Cannon was a truck driver whose services were hired for the day by other defendants (Mins. of Sept. 4, p.m. session, p. 7) who had collected broken furniture, a live rat, and other articles to be delivered to the City Commissioner of Buildings as a protest against slum conditions. As he drove towards City Hall Plaza Cannon was ordered by a police officer to pull the truck to the curb (Mins. of Sept. 3, p.m. session, p. 62, 71). While an officer was conversing with him, other defendants began to hurl garbage from the back of the truck into the street (id., 63). Cannon, of course, did not participate in the unloading of the truck (id. 63, Mins. of Aug. 30, p. 21, 63). Cannon was given a summons for carting garbage without a license, and since the truck was taken to the police station, Cannon was asked to come along with his vehicle (Mins. of Sept. 3, p.m. session, p. 66). Upon arriving at the station house he was arrested by another police officer (Mins. of Aug. 29, pp. 64-5).

Therefore, on this record, respondent respectfully leaves it to the discretion of this Court whether the evidence showed that Cannon threw, dumped, deposited, or placed upon any highway any refuse or trash within the meaning of Section 1220 of the Vehicle and Traffic Law.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County

ALAN F. LEIBOWITZ
Assistant District Attorney
Of Counsel

December, 1965.

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT APPELLATE TERM

STEPHAN GORDON,
Defendant-Appellant,

-against-

PEOPLE OF THE STATE OF NEW YORK
Respondent

Notice of Motion
Index No. **14232-'63**

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of **GEORGE SCHIFFER, ESQ.** sworn to the **18th** day of **May**, 19**65**, made and filed herein, the undersigned will move this court at a stated term thereof for the hearing of motions to be held at the **Supreme Court** Courthouse, **60 Centre** Street, Borough of **Manhattan**, City of New York on the **28th** day of **May**, 19**65**, at 10 o'clock in the Forenoon on that day, or as soon thereafter as counsel can be heard, for an order permitting the Defendant-Appellant herein to prosecute this appeal as a poor person, on the original record and typewritten briefs, for the assigning of counsel for an enlargement of the time in which to perfect the within appeal to some reasonable time after the transcription of the minutes of the proceedings below at the expense of the State of New York.

Dated: New York, New York
May 19, 1965

GEORGE SCHIFFER, ESQ.
Attorney for Defendant-Appellant
Office and P.O. Address
40 E. 49th Street
New York, New York 10017

By____________________
Stephen M. Nagler, Esq.
Of Counsel

TO:

FRANK HOGAN, ESQ.
District Attorney
New York County
Office and P.O. Address
155 Leonard Street
New York, New York

CLERK
Appellate Term
First Department

SUPREME COURT OF THE STATE OF NEW YORK
~~FIRST~~ DEPARTMENT APPELLATE TERM

STEPHAN GORDON

Defendant-Appellant,

Same Caption as on

-against-

Motion

~~Affidavit~~
~~Index No. 14232 '63~~

PEOPLE OF THE STATE OF NEW YORK,

Respondent

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK ss:

STEPHEN M. NAGLER, Esq.
~~GEORGE SCHIFFER, ESQ.~~ , being duly sworn deposes and says:

1. I am an attorney with offices at 150 Nassau Street ~~40 East 49th Street~~ Borough of Manhattan, City of New York and State of New York.

2. I ~~was~~ HAVE DISCUSSED THIS CASE WITH one of the attorneys representing the defendants-appellants at the trial ~~of this cas~~e in the Criminal Court, ~~of~~ New York County, AND I HAVE READ THE COMPLAINTS AND OTHER PAPERS ON FILE HEREIN.

3. ~~This action was commenced~~ The defendants-appellants were arrested on or about the 1st day of August, 1963. ~~The cause was thereafter placed upon the calendar for Part IC-1 of the Criminal Court of the County of New York~~. The case was reached for trial on the 23RD ~~26th~~ day of August 1963 IN PART 2B-1 OF THE CRIMINAL COURT OF THE CITY OF NEW YORK, BEFORE HONS. BENJAMIN GASSMAN, EVELYN RICHMAN AND ARTHUR DUNAIF, JUDGES, ~~and~~. The defendants-appellants ~~was~~ WERE found guilty under §§ 2036 + 1851 ~~722~~ of the Penal Law (DEFENDANTS GLICK & FRIEDER WERE CONVICTED OF VIOLATING §2036 ONLY) ~~and was sentenced to Five Days in the Workhouse, on September 5, 1963.~~ ON AUGUST 29TH, 1963 AND WERE SENTENCED ON THAT DAY TO 10 DAYS IN THE CITY PRISON ON THE COUNT UNDER §1851 AND 30 DAYS SS UNDER §2036.

4. An appeal was taken to this Court from this judgment by filing a Notice of Appeal in the office of the clerk of New York County and serving a copy of such Notice on the District Attorney of New York County on OR ABOUT the 12TH ~~9th~~ day of September, 1963.

5. Deponent believes that the contentions of defendants-appellants for Appeal to this Court have merit and that defendant-appellant is innocent ~~by virtue of the fact that:~~

a. ~~There was no disturbance of the peace prior to the arrest of defendants, and~~

b. ~~A conviction under the circumstances would render § 722 unconstitutionally vague and would deprive the defendants of their rights under the First Amendment to the U. S. Constitution.~~

(SEE OTHER SIDE)

a. The defendants-appellants lawfully entered a public building during business hours, ~~in a lawfully manner~~ and hence can not properly be convicted of violating § 2036 of the Penal Law. PEOPLE v. LAWSON, ~~Oct. 22, 1964~~, (Sup. Ct., App. T., 1st DEPT. 1964).

b. One is not required to assist in one's own arrest and hence the claim that defendants remained 'inert' when they were placed under arrest does not constitute a violation of § 1851 of the Penal Law. Furthermore, if the arrest under § 2036 was ~~[illegible]~~ wrongful as defendants contend even resistance would have been justified.

c. The sentences of 10 days for violating §1851 were unreasonable under the circumstances.

5. The amount and sources of defendant-appellant's income are as follows: **Substitute teacher, New York Board of Education - $28.00 per day. This amounted to $2,000 in 1964. Mr. Gordon has no other source of income.**

6. Defendant-appellant's property and the value thereof is as follows: **Used clothing to the value of approximately $150.**

~~7. Defendant-appellant does not own an automobile.~~

~~8. Defendant-appellant has savings in the amount of **$25.00**~~

6 ~~9~~. Defendant-appellant Monia informs me that she is unable to pay the costs, fees and expenses necessary to maintain this appeal. She further informs me that other defendants-appellants are living in dire circumstances, although she is unable to provide figures as to their income.

7 ~~10~~. Defendant-appellant Monia desires that I be assigned to prosecute this Appeal and I have agreed to do so without compensation. Neither I nor any other attorney has, ~~[illegible]~~ received any compensation for any services in this case.

8 11. Defendant-appellant Monia is not now incarcerated.

9 12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission on behalf of defendant-appellant to prosecute the Appeal in the above-entitled action as a poor person on the original record and typewritten briefs and that the court assign me as attorney and counsel for that purpose and that as attorney and counsel I agree to prosecute the same without compensation.

~~GEORGE SCHIFFER~~, Esq. / S.N.
Attorney-at-Law
Office and P.O. Address
~~40 E. 49th Street~~ 150 Nassau St.
New York, New York ~~10017~~ 10038

Sworn to before me this
~~18~~ day of ~~[illegible]~~, 196~~5~~6

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Term: First Department

---x

The People of the State of New York,
Respondent

Index No.
40870-65

-against-

George Cannon
Defendant-Appellant

---x

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Stephen M. Nagler, Esq., being duly sworn to the ~~1st~~ 27th day of ~~September,~~ August 1965, the undersigned will move this Court at a Term thereof to be held at the Courthouse 60 Centre Street in the City and County of New York on the ~~27th~~ 1st day of ~~August~~ September at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order extending the time of the defendant-appellant to perfect and file his case on appeal herein to the October Term of this Court and for such other and further relief as to this Court may seem just and proper.

DATED:
New York, New York
August 27th, 1965

Yours, etc.,
George Schiffer, Esq.
Attorney for Defendant-
Appellant
Office and P.O. Address
40 East 49th Street
New York, New York, 10017

TO Hon. Frank S. Hogan, Esq.
District Attorney of New York County
Office and P. O. Address
155 Leonard Street

CLERK, Appellate Term
First Department

AFFIDAVIT

STATE OF NEW YORK)
County of New York) ss.:

Stephen M. Nagler, Esq., being duly sworn deposes and says:

1. I am an attorney admitted to practice in the State of New York and associated with George Schiffer, Esq., who was one of the attorneys representing the defendant-appellant at the trial of this case in the Criminal Court of the City of New York, County of New York, and he is representing the defendant-appellant on this appeal.

2. The trial of this case was commenced on or about the 26th day of August 1963 in Part I C-1 of the Criminal Court of the City of New York, County of New York. Defendant Cannon was found guilty of violating section 1220 of the Vehicle and Traffic law and was sentenced to 10 days in the workhouse on September 5, 1963.

3. An appeal was taken to this Court by filing a Notice of Appeal in the office of the Clerk of the Criminal Court and serving a copy of such notice on the District Attorney of New York County, both on the 9th day of September 1963. A Certificate of Reasonable Doubt was sought by motion dated September 6, 1963 and granted. More than 120 days have since elapsed.

4. A stipulation was thereafter entered into with the office of the District Attorney of New York County delaying the appeal of this defendant and others convicted with him until a final disposition of the case of People v. Penn now seeking certiorari from the United States Supreme Court. However, due to special circumstances and the facts of this case it was decided to remove it from the list of cases on the stipulation and prosecute the appeal at this time.

5. Permission to appeal as poor person was sought separately by filing Notices of Motions and affidavits dated May 19, 1965 and subsequent affidavits dated June 4, 1965.

6. Permission to appeal as a poor person on the original record and typewritten briefs was granted in June 1965 and it was ordered that the appeal be perfected for the September Term of 1965.

7. George Schiffer, Esq., was assigned as attorney for defendant-appellant.

8. Although several requests have been made of the office of the Court Reporters, the minutes of the trial below have not yet been transcribed. As a result George Schiffer, Esq., is unable to prepare either the records or the briefs necessary to perfect the within appeal. It is through no fault of his own that Mr. Schiffer or anyone associated with him is unable to perfect the appeal for the September Term as ordered by this Court.

9. Deponent is of the opinion that the conviction of

the defendant herein was against the weight of evidence and contrary to law.

10. Other than the reasonable time requested and granted to allow for the transcription of the minutes no prior extensions of time have been sought.

11. This appeal had ~~never, on information and belief,~~ been dismissed under Rule III(2)(c), ON JANUARY 13, 1964 AND REINSTATED ON FEBRUARY 18, 1964, BY ORDER OF THIS COURT,

WHEREFORE I respectfully request an order extending the time to perfect the appeal herein until the October Term of this Court, and for such other and further relief as to this Court may seem just and proper.

Sworn to before me
this 27th day of August 1965

Stephen M. Nagler
Stephen M. Nagler, Esq.

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM
....x

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

NOTICE OF
ARGUMENT

GEORGE CANNON,

Defendant-Appellant.
....x

SIR:

PLEASE TAKE NOTICE that defendant's appeal in the above entitled action will be brought on for argument before this court at the next term thereof, to be held at the courthouse, 60 Centre Street, in the County and City of New York on the 3rd day of January, 1966; at the opening of the court on that day or as soon thereafter as counsel can be heard.

Dated: New York, N.Y.
December 21st, 1965

Yours, etc.,

GEORGE SCHIFFER, ESQ.
Attorney for Defendant-Appellant
Office & P. O. Address
40 E. 49th Street
New York, New York

By ________________________

STEPHEN M. NAGLER, ESQ.
c/o CORE
38 Park Row
New York, New York 10038

TO: Hon. Frank Hogan, Esq.
District Attorney
New York County
Office & P. O. Address
155 Leonard Street
New York, New York

Clerk
Appellate Term, First Department

/

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE TERM : FIRST DEPARTMENT

....x

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

Indes #40870-65
40869-65

- against -

GEORGE CANNON, STEPHEN GORDON,

Defendant-Appellants

....x

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.;

STEPHEN M. NAGLER, being duly sworn, deposes and says:

1. I am an attorney associated with George Schiffer, attorney for the defendants herein.

2. These defendants are two of eleven convicted of violating §1220 of the Vehicle and Traffic Law, (Cannon) and §722 of the Penal Law (Gordon) after trial before Hon. Judge Rader in the Criminal Court of the City of New York, County of New York, on September 5th, 1963.

3. A stipulation was then entered into between George Schiffer, and the District Attorney, County of New York that prosecution of the appeals in these cases would await the results of appeals in PEOPLE v. PENN .

4. The Court of Appeals of the State of New York affirmed the judgment of the Appellate Term in PEOPLE v. PENN, and its companion cases. The defendants in the PENN case now plan to apply to the Supreme Court of the United States for certiorari.

5. Notwithstanding the fact that a final disposition has not yet been made of PEOPLE v. PENN, the District Attorney of New York County and George Schiffer, attorney for defendants, have agreed, subject to the approval ofthe Court, that, due to special facts in the cases of these defendants, their appeals should be prosecuted at this time without waiting for a final determination of PEOPLE v. PENN.

STEPHEN M. NAGLER

SUPREME COURT OF THE STATE OF NEWYORK

APPELLATE TERM : FIRST DEPARTMENT

--------------------------------------x

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

Index #40870-65

-against-

GEORGE CANNON,

Defendant-Appellant

--------------------------------------x

SUPPLEMENTARY AFFIVIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

GEORGE CANNON being duly sworn deposes and says:

1. I was convicted after trial in the Criminal Court of the City of New York, County of New York, of violating 81220 of the Vehicle and Traffic Law, and I was sentenced to ten days in the workhouse on September 5th, 1963.

2. I am presently unemployed. I am a truck driver by occupation, but I am unable to secure permanent employment because I cannot secure a bond due to this conviction. I work when I can find employment, but I have been able to do so for only one or two days each week. (At the rate of $25/per day.). This amounted to approximately $3,000 in 1964.

3. I am married, and I have four children. I have been legally separated from my wife for ten years, and I am required to pay $25 per week in support of my children. Because I have no money I have failed to make any payment for approximately a year.

4. I do not know if my wife is employed but she would not be able or willing to assist me with this appeal.

5. I have no savings,checking accounts, stocks or bonds whatsoever.

6. I do not own an automobile.

7. I do not own any real property whatsoever.

8. The only personal property owned by me is used clothing and personal effects to the value of approximately $200.

9. I have asked George Schiffer to represent me on this appeal and he has consented to do so without fee as he did at the trial of this case in the Criminal Court of the City of New York, County of New York. Furthermore,

I have not paid counsel or any other fees at any stage of these proceedings because George Schiffer and Kenneth Kaplan who represented all defendants including myself at the trial and George Schiffer who has consented to represent me on this appeal have donated their services without any compensation whatsoever.

10. I do not have sufficient funds to pay the cost of transcription of the minutes of my trial, to retain counsel, or to pay any of the other costs, fees or expenses necessary to maintain this appeal. Neither my wife nor any other member of my immediate family has any funds with which they could or would in any way assist me.

11. I am innocent of the charges against me.

12. I am not now incarcerated.

13. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq., of counsel to George Schiffer.

14. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission to prosecute this appeal as a poor person on the original record and typewritten briefs, and that the court assign George Schiffer as attorney' and counsel for that purpose without compensation.

George Cannon
GEORGE CANNON

Sworn to before me this

4th day of June, 1965

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Term: First Department

NOTICE OF MOTION

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The People of the State of New York,
Respondent

Docket ~~Index~~ Nos.
~~40869-65~~
5813, 5814, 5815, 5817, 5818, 5819.

-against-

JEFFREY GLICK, ~~Stephan Gordon,~~
Defendants-Appellants.

---x

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavits of Stephen M. Nagler, Esq., & VICKI MORRIS, being duly sworn to the ~~1st~~ 2[illegible] day of ~~August~~ ~~September~~ OCTOBER, 196~~5~~6, the undersigned will move this Court at a Term thereof to be held at the Courthouse 60 Centre Street in the City and County of New York on the ~~27th~~ ~~1st~~ 26th day of ~~September~~ ~~August~~ OCTOBER at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order extending the time of the defendants-appellants to perfect and file ~~his~~ their case on appeal herein to the ~~October~~ JANUARY Term of this Court and permitting Vicki Morris to appeal as a poor person on the original record and typewritten briefs and for such other and further relief as to this Court may seem just and proper.

DATED:
New York, New York
~~August 27th, 1965~~
OCTOBER 20th, 1966

Yours, etc., Stephen M Nagler
~~George Schiffer, Esq.~~
Attorney for Defendants-
Appellants
Office and P.O. Adress
~~40 East 49th Street~~ 150 Nassau Street
New York, New York ~~10017~~ 10038

TO Hon. Frank S. Hogan, Esq.
District Attorney of New York County
Office and P.O. Address
155 Leonard Street

CLERK, Appellate Term
First Department

AFFIDAVIT

STATE OF NEW YORK)
County of New York) ss.:

Stephen M. Nagler, Esq., being duly sworn deposes and says:

1. I am an attorney admitted to practice in the State of New York and associated with George Schiffer, Esq., who was one of the attorneys representing the defendant-appellant at the trial of this case in the Criminal Court of the City of New York, County of New York, and he is representing the defendant-appellant on this appeal.

2. The trial of this case was commenced on or about the 26th day of August 1963 in Part I C-1 of the Criminal Court of the City of New York, County of New York. Defendant Gordon was found guilty of violating section 722 of the penal law and was sentenced to 5 days in the workhouse on September 5, 1963.

3. An appeal was taken to this Court by filing a Notice of Appeal in the office of the Clerk of the Criminal Court and serving a copy of such notice on the District Attorney of New York County, both on the 9th day of September 1963. A Certificate of Reasonable Doubt was sought by motion dated September 6, 1963 and granted.More than 120 days have since elapsed.

4. A stipulation was thereafter entered into with the office of the District Attorney of New York County delaying the appeal of this defendant and others convicted with him until a final disposition of the case of People v. Penn now seeking certiorari from the United States Supreme Court. However, due to special circumstances and the facts of this case it was decided to remove it from the list of cases on the stipulation and prosecute the appeal at this time.

5. Permission to appeal as poor person was sought separately by filing Notices of Motions and affidavits dated May 19, 1965 and subsequent affidavits dated June 4, 1965.

6. Permission to appeal as a poor person on the original record and typewritten briefs was granted in June 1965 and it was ordered that the appeal be perfected for the September Term of 1965.

7. George Schiffer, Esq., was assigned as attorney for defendant-appellant.

8. Although several requests have been made of the office of the Court Reporters, the minutes of the trial below have not yet been transcribed. As a result George Schiffer, Esq., is unable to prepare either the records or the briefs necessary to perfect the within appeal. It is through no fault of his own that Mr. Schiffer or anyone associated with him is unable to perfect the appeal for the September Term as ordered by this Court.

9. Deponent is of the opinion that the conviction of the defendant herein was against the weight of evidence and contrary to law.

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT APPELLATE TERM

GEORGE CANNON, Defendant-Appellant,

-against-

PEOPLE OF THE STATE OF NEW YORK

Respondent

Notice of Motion
Index No. **14698-'63**

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of **GEORGE SCHIFFER, ESQ.** sworn to the **18th** day of **May**, 19**65**, made and filed herein, the undersigned will move this court at a stated term thereof for the hearing of motions to be held at the **Supreme Court** Court-house, **60 Centre** Street, Borough of **Manhattan**, City of New York on the **28th** day of **May**, 19**65**, at 10 o'clock in the Forenoon on that day, or as soon thereafter as counsel can be heard, for an order permitting the Defendant-Appellant herein to prosecute this appeal as a poor person, on the original record and typewritten briefs, for the assigning of counsel for an enlargement of the time in which to perfect the within appeal to some reasonable time after the transcription of the minutes of the proceedings below at the expense of the State of New York.

Dated: New York, New York
May 19, 1965

GEORGE SCHIFFER, ESQ.
Attorney for Defendant-Appellant
Office and P. O. Address
40 E 49th Street
New York, New York 10017

By____________________
Stephen M. Nagler, Esq.
Of Counsel

TO:

FRANK HOGAN, ESQ.
District Attorney
of New York County
Office and P.O. Address
155 Leonard Street
New York, New York

CLERK
Appellate Term
First Department

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT APPELLATE TERM

GEORGE CANNON
Defendant-Appellant,

-against-

PEOPLE OF THE STATE OF NEW YORK,
Respondent

Affidavit
Index No. 14698-'63

STATE OF NEW YORK)
COUNTY OF **NEW YORK**) ss:

GEORGE SCHIFFER, being duly sworn deposes and says:

I am an attorney with offices at **40 East 49th Street** Borough of **Manhattan**, City of **New York** and State of New York.

1. I was one of the attorneys representing the defendant-appellant at the trial of this case in the Criminal Court, **of New York** County.

2. This action was commenced on or about the **21st** day of **August**, 19**63**. The cause was thereafter placed upon the calendar for Part **IC-1** of the Criminal Court of the County of **New York**. The case was reached for trial on the **26th** day of **August** 19**63** and the defendant-appellant was found guilty under **§1220 of the** Vehicle and Traffic Law and was sentenced to **ten days in the workhouse,** on September 5, 1963.

3. An appeal was taken to this Court from this judgment by filing a Notice of **Appeal** in the office of the clerk of **New York** County and serving a copy of such Notice on the District Attorney of **New York** County on the 9th day of September, 1963.

4. Deponent believes that the contentions of defendant-appellant for Appeal to this Court have merit and that defendant-appellant is innocent.

a) Mr. Cannon was arrested and charged with violating a statute which w repealed (§ 1434 of the Penal Law) and the Complaint was amended over Counsels' objections to charge him with a different offense (§1220, Vehicle and Traffic Law).
b) No evidence appears in the record to indicate that any of the defendants did anything to violate §1220.
c) The statute is unconstitutionally vague.

5. The amount and sources of defendant-appellant's income are as follows:

Defendant-appellant is a truck driver with no regular employment. He earned less than $3,000 in 1964. He has two dependents.

6. Defendant-appellant's property and the value thereof is as follows: **Approximately $200 worth of used clothing.**

7. Defendant-appellant does not own an automobile.

8. Defendant-appellant has no savings whatsoever.

9. Defendant-appellant is unable to pay the costs, fees and expenses necessary to maintain this appeal.

10. Defendant-appellant desires that I be assigned to prosecute this Appealand I have agreed to do so without compensation.

11. Defendant-appellant is not now incarcerated.

12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission on behalf of defendant-appellant to prosecute the Appeal in the above-entitled action as a poor person on the original record and typewritten briefs and that the court assign me as attorney and counsel for that purpose and that as attorney and counsel I agree to prosecute the same without compensation.

Sworn to before me this
18 day of May , 19

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 196
6

George Schiffer
Attorney-at-Law
Office and P.O. Address
40 East 49th Street
New York, New York 10017

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE TERM : FIRST DEPARTMENT

-------------------------------------x

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

Index #40869

STEPHAN GORDON,
GEORGE CANNON,

Defendant-Appellant ,

-------------------------------------x

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

STEPHAN GORDON being duly sworn deposes and says:

1. I was convicted after trial in the Criminal Court of the City of New York, County of New York, of violating §722 Subdivisions 2 and 3 of the Penal Law, and I was sentenced to five days in the workhouse on September 5, 1963.

2. I am twenty-four years of age, unmarried, and have no dependants.

3. I am presently unemployed. I hold a license to teach as a substitute teacher in the Junior-High-Schools of the City of New York. Substitute Junior-High-School teachers are paid $28 per day but I have been unable to secure steady employment since my discharge from the U.S. Army. I was honorably discharged from the U.S. Army on or about April 9, 1965.

4. I receive irregular assistance from my parents with whom I live part of the time. Their sole source of income is my father's salary of approximately $5,000 per year, as a Primary School teacher at the Woodward School in New York City. They are not responsible for my maintenance and they are neither able nor willing to pay the costs of this appeal.

5. I have no sources of income other than those mentioned above.

6. Although I had twenty-five dollars, saved until two weeks ago, I now have no savings whatsoever. I have no checking account, stocks or bonds.

7. I do not own an automobile.

8. I do not own any real property.

9. The only personal property which I own is used clothing of the value of approximately $150.

10. I have asked George Schiffer to represent me on this appeal and he has consented to do so without fee as he did at the trial of this case in the Criminal Court of the City of New York, County of New York. Furthermore I have not paid counsel or any other fees at any stage of these proceedings because George Schiffer and Kenneth Kaplan who represented all defendants including myself at the trial and George Schiffer who has consented to represent me on this appeal have donated their services without any compensation whatsoever.

11. I do not have sufficient funds to pay the cost of

transcription of the minutes of my trial, to retain counsel, or to pay any of the other costs, fees or expenses necessary to maintain this appeal. Nor are my parents able or willing to assist me in this matter.

12. I am innocent of the charges against me.

13. I am not now incarcerated.

14. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq., of counsel to George Schiffer.

15. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission to prosecute this appeal as a poor person on the original record and typewritten briefs, and that the court assign George Schiffer as attorney and counsel for that purpose without compensation.

Stephen W. Gordon
STEPHAN GORDON

Sworn to before me this

day of June 4, 1965

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

May 5, 1965

Mr. George Cannon
11 Waverly Place
New York, New York

Dear Mr. Cannon:

I am assisting George Schiffer in the preparation of an Appeal in your case which arose from the incidents in the vicinity of City Hall in 1963. As it is necessary for the affidavit to be drawn in your name I would appreciate it if you would contact me at your earliest possible convenience, at PL 2-8060.

Very truly yours,

SMN/cs

Steven M. Nagler

May 5, 1965

Mr. Jon K. Schaefer
403 E. 8th Street
New York, New York

Dear Mr. Schaefer:

I am assisting George Schiffer in the preparation of an Appeal in your case which arose from the incidents of 1963 in the vicinity of City Hall. As it is necessary for certain affidavits to be drawn in your name I would appreciate it if you would call me at PL 2-8060 at your earliest possible convenience.

Very truly yours,

SMN/cs

Steven M. Nagler

State Historical Society Of Wisconsin

Please Retain Original Order

W-2

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
NON-RESIDENCE WELFARE CENTER
119 WEST 31st STREET
NEW YORK, N. Y. 10001

IN REPLY REFER TO

554- 8848
TELEPHONE NO.

December 19, 1966

Mr. Raymond Clermont
161 West 80 Street
New York 24, New York

Dear Sir:

As per our discussion on this date we are revising your budget effective 1/1/67. In addition, we will be sending supplementation to you to cover the period 12/1 through 12/31/66.

Since your wife is no longer in your home we have removed her from your budget and we are reclassifying your case so that henceforth you will be receiving full assistance in the category of ADC (Aid to Dependent Children). Since this is so, you will be expected to maintain the home and to be always available to care for your children. This will include taking them back and forth to school when the occasion demands. In addition we have no approval to permit you to attend school since you will be need in the home to care for your children. The checks which you will be receiving will be for food clothing, personal incidentals; rent and laundry. You will be expected to manage your money in the manner so prescribed.

Very truly yours,

J. F. Taylor

JT:mf

J.F. TAYLOR

PS: We are restoring rent to your budget effective 1/1/67 on the assumption that you will be moving back to your old apartment at that time. We will expect you to resume paying rent and to have rent receipts verifying same.

March 9, 1967

Hon. Mitchell Ginsberg
Commissioner of Welfare of City of N.Y.
250 Church Street
New York, N.Y. 10013

Re: Raymond Clermont, (ADC 2508457)

Dear Commissioner Ginsberg:

Enclosed please find a letter demanding a fair hearing in the case of the above named client. Attached to that letter is a request for emergency assistance, which we would appreciate if you would note as if it were directed to you.

In addition to the matter stated in that letter, on behalf of my client, I wish to lodge a formal complaint against Mr. J.F. Taylor, a supervisor of unit "EE" at the Non Residence Welfare Center. The complaint is based on information and belief. I will be happy to furnish details at the appropriate time. In the specifications set forth below the "supervisor" referred to is Mr. Taylor:

1. Giving out confidential information from a case record to a party or parties known to be adverse to the interests of the welfare recipient.
2. Interferring with the proper administration of a case no longer under the supervision of the unit for the purpose of interferring with the extension of assistance to the client, and his family, and for other purposes adverse to the interests of the client.

3. Responding to complaints by the client to the Commissioner with increased harrasement including but not limited to the wrongfull discontinuance of public assistance, repeated unjustifiable demands that the client appear at the Welfare Center, interferrance by the supervisor with the case after it was no longer in the unit under his supervision, releasing confidential information from the case record to persons whose interests are known to be adverse to the client, and stimulating the commencement of neglect proceedings without basis in law or fact.

4. Demanding that the client appear for an unwarranted psychiatric examination and concealing this purpose from the client.

We request that you review these charges with regard to the possibility of taking appropriate disciplinary measures and possible prosecution under section 145 of the Social Welfre Law. We further request that you order the supervisor in question to totally withdraw from any connection with this case. As stated previously I hope that you will regard such of the allegations contained in the "fair hearing" letter as are appropriate as specifications in this complaint.

I promise you our full cooperation and anxiously await your answer.

Very truly yours,

SMN:lg

Stephen M. Nagler

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

March 9, 1967

Hon. Joseph Louchheim
Deputy Commissioner of New York City Affairs
Dept. of Social Welfare of the State of N.Y.
270 Broadway
New York, New York 10007

Re: Raymond Clermont, A.D.C. 2508457

Dear Commissioner Louchheim:

I represent the above named client. On his behalf I demand a fair hearing to address a scandalous series of wrongs which he has encountered at the hands of a certain person or persons employed by Department of Welfare, City of New York.

The issues which we propose to raise at the fair hearing are as follows:

1. Refusal to permit the client to continue school for retraining (RCA Institute), and to pay tuition for such schooling.

2. Refusing to pay rent as security for premises located at 97-64 Corona Avenue, Queens, occupied by Raymond Clermont and his family since Jan. 23, 1967 and attempting to induce the owner of the premises to evict the client.

3. Knowingly misdirecting checks for recurrent grants for periods commencing Feb. 1, 1967 and Feb. 16, 1967 after case supervisor (Mrs. E. Percival) had been notified of change of address on or about Jan. 25, 1967, and refusing to turn over these checks to the client after the checks were returned by the post office to the welfare center.

4. Insisting that the client come to the welfare center almost daily during January and February, 1967, for purposes of harrassment, and failed to reimburse the client for carfare on most of these occasions.

5. Wrongfully discontinuing public assistance to the client on Feb. 17, 1967 for reasons known to the supervisor signing the letter (J.F. Taylor) to be false and/or in violation of the "money payment" principle and after the supervisor was no longer in charge of the case.

6. Attempting to condition the client's restoration to public assistance on a psychiatric examination.

7. Failing to provide adequate reimbursement to client for personal property destroyed by fire.

I have just been informed, in addition, that although the case has "theoretically"been reopened, Mr. Clermont has received only $40.00 for the first half of the month of March. A demand that he be furnished with the remainder of the funds which should properly be budgeted for him and his five children, was rudely turned aside. Therefore both this and the question of reimbursement of funds not received by Mr. Clermont during the period in which his case was wrongfully closed are also issues for the fair hearing. At this point, the extension of assistance to Mr. Clermont and his children is an extreme emergency. Unless steps are taken to furnish them the needed assistance, we will be forced to seek other remedies.

Very truly yours,

SMN:lg

Stephen M. Nagler

cc:

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

March 14, 1967

Mr. Stephen M. Nagler
Scholarship Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: CLERMONT, Raymond
97-64 Corona Avenue
Queens, New York

Dear Mr. Nagler:

This is in reply to your letter of March 9, 1967 requesting a Fair Hearing on behalf of Mr. Clermont because of the inadequacy of his public assistance grant.

We will make the necessary review with the New York City Department of Welfare of the situation involved in this Fair Hearing request. If the situation is not adjusted in a manner that is satisfactory to Mr. Clermont, a hearing will be scheduled within sixty (60) days and your office will be given five days notice of the time and place of such a hearing.

Sincerely yours,

Eleanor Blakely

(Mrs.) Eleanor Blakely
Senior Welfare Representative
Family Serveces

March 21, 1967

Mr. Milton Palevsky
Senior Case Supervisor
Non-Residence Welfare Center
119 West 31st Street
New York, New York

RE: CLERMONT, RAYMOND
ADC# 2508457

Dear Mr. Palevsky:

I am writing to you in regard to the above-named client, who has requested a fair hearing involving the handling of his welfare case by Mr. J. F. Taylor, supervisor of Unit KK.

I have known Mr. Clermont since October, 1966, when his wife, Laurente, was registered in our prenatal clinic. My work with this family involved translating for Mrs. Clermont in the clinic and, in light of their impending divorce, discussing with Mr. and Mrs. Clermont, future plans regarding care of the children, Mr. Clermont's vocational plans, and means of support for their large family.

I have been very concerned about the unstable status of both Mrs. Clermont's welfare case and that of Mr. Clermont and the children. The questionable status of the cases appeared primarily based on assumptions expressed verbally to me by Mr. Taylor, that Mr. Clermont must have some outside source of income. As the charges made between Mr. Clermont and Mr. Taylor have increased during the past few months, involving at one point Mr. Clermont's suspension from the Welfare rolls, my concern has been not to judge the claims of one or the other, but to request handling of this entire problem by an objective person of authority in your welfare center. Complaints based on Mr. Clermont's charges received at your welfare center from City Hall, from a newspaper, from me and others have automatically been referred back to Mr. Taylor. In a case where the motives of a welfare worker or supervisor are being questioned, it appears to me pointless and unjust both to Mr. Taylor and the client to continually refer the problem back to Mr. Taylor.

I will not attempt to list the many specific charges made, as I assume you have a letter from Mr. Clermont on file. However, the following examples will give part of the picture. In December, when the Clermonts separated, Mrs. Clermont applied for assistance. There was much delay, primarily involving the question of paternity of the expected child. Mrs. Hughes in Intake, whom I asked to investigate the denial of assistance to Mrs. Clermont, was able to correct the problem and help Mrs. Clermont to receive assistance. During this time, I spoke to Mr. Taylor about the problem of Mrs. Clermont's case remaining unopened. He stated that he had "a hunch" that Mr. Clermont had some outside source of income, such as a television-radio repair shop, and by this means he was managing to meet Mrs. Clermont's weekly rent as well as his own.

Mr. Taylor referred to Mr. Clermont as "a con-man". Mr. Clermont states that he borrowed money all during this time and when Mr. Taylor requested proof, he sent him an affidavit signed by his Haitian friend and stamped by a notary public. However, Mr. Taylor has since expressed to me the thought that Mr. Clermont "can get money whenever he wants it". Mr. Clermont is in debt to his church group for $400.00 as told me by a member of the administrative body of that church, and also owes money to a bank for his wife's passage from Haiti. During his suspension from assistance, he was forced to go to Catholic Charities for food.

Mr. Taylor states that Mr. Clermont failed to report funds in a bank account which he used to make payment on a loan, while Mr. Clermont states he did report this.

Mr. Taylor was in complete disapproval of Mr. Clermont's completing a course in engineering, which he started this year. He stated to me that "Welfare is a last resort", and that if he can go and sit in a classroom, he could be working instead.

Mr. Clermont's allegations against Mr. Taylor assumed such proportions that I had doubts myself as to the soundness of Mr. Clermont's thinking. In late February Mr. Taylor stated, during the period when Mr. Clermont's case was suspended, that a psychiatric consultation would be done if Mr. Clermont would agree to submit to it. I did everything I could to convince Mr. Clermont to agree to it. However, I then received a call from Miss Helen Garvey, a former caseworker on the Clermont case, who confirmed by her own knowledge, many of the charges made by Mr. Clermont against Mr. Taylor. She stated that she had tried to bring this problem to the attention of Mr. Taylor's superiors but, again, had been referred back to Mr. Taylor.

I am certainly in no position to give any "proof" regarding this situation. I can only relate to you the fact that there are diverse stands taken by Mr. Taylor and Miss Garvey and the client.

Thank you for your attention to this matter. I hope that the case will soon be settled objectively.

Yours truly,

Linda K. Jones

(Mrs.) Linda K. Jones
Social Service Department
Woman's Hospital
TEL: 870 - 6217

LKJ:RGG
CC: Miss Rachel Wisner

W-1

1664

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
250 CHURCH STREET
NEW YORK, N. Y. 10013
TELEPHONE 344-8700

MITCHELL I. GINSBERG
COMMISSIONER

March 22, 1967

Stephen M. Nagler, Esq.
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: Clermont, Raymond
ADC 2508457

Dear Mr. Nagler:

On March 9, 1967, you wrote to me stating that you wished to lodge a formal complaint against Mr. J. F. Taylor, a Supervisor at Non-Residence Welfare Center.

I have carefully reviewed the situation. However, the allegations which you set forth in your letter are very broad. No specifics or substantiating evidence is furnished. Accordingly, it is not possible for me to answer your letter point by point save in a general way.

My review has not adduced any evidence to indicate confidential information relating to Mr. Clermont has been given "to a party or parties known to be adverse to the interest of the welfare recipient"; nor is there any evidence to indicate an interference with "the proper administration of the case" nor of harassment of Mr. Clermont. There has been no stimulation or institution of any neglect procedures against Mr. Clermont nor does our Department have knowledge of the initiation of such action by any person or agency.

There is no indication that an "unwarranted" psychiatric examination was scheduled. Psychiatric examinations are considered only after a careful review of the individual situation and after discussion with medical and casework consultants.

I am extremely concerned that there be no discrimination of whatever nature practiced by any member of my staff. Any allegation of discrimination has been, and will be, promptly investigated. However, you will admit that our staff members are also entitled to protection against vague statements of alleged improper activity.

Should you have specific and concrete evidence which would indicate some unprofessional activity by any member of my staff, you have my assurance that it will be reviewed promptly and thoroughly.

Very truly yours,

Maurice O Hunt

Maurice O. Hunt
Acting Commissioner of Welfare

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

3/23/67

Dear Mrs Percival,

I trust that the enclosed rent & security receipt and the statement of Mrs Tracy will be sufficient to produce the rent money due to date (not to mention reimbursement for previous expenses).

I also wish to draw your attention to the Con-Ed bills, which certainly merit emergency treatment.

In discussing the matter of the "padlock" further with Mr Clemmont and Mrs Tracy, I find that Mr Clemmont never saw a padlock on his door but merely feared a threat, which, Mrs. Tracy informs me, was never carried out.

Very truly yours,

A. Nagler

Contributions are deductible for income tax purposes

▪ president; Andrew E. Norman ▪ vice presidents; William S. Ellis, Nannette Sachs ▪ secretary; Ezra Levin ▪ treasurer; Shelley Appleton ▪ executive director; Marvin Rich ▪ leadership development director; Ronnie M. Moore ▪ legal director; Carl Rachlin ▪ BOARD OF DIRECTORS; Nils R. Douglas, chairman ▪ John P. Allison ▪ Robert Ausnit ▪ James Baldwin ▪ Katrina McCormick Barnes ▪ Canon James P. Breeden ▪ Dr. Kenneth B. Clark ▪ Robert Curvin ▪ Charlotte Devree ▪ Robert F. Drinan, S. J. ▪ John Henry Faulk ▪ Michael O. Finkelstein ▪ Doris Freedman ▪ Dr. Edward L. Gibson ▪ James T. Harris ▪ Claude Heckscher ▪ Norman Hill ▪ Clarence B. Jones ▪ Dr. Archie Lacey ▪ Joann List Levinson ▪ Henry Morgenthau, III ▪ Dr. William Stuart Nelson ▪ Richard J. Schwartz ▪ Elaine Slater ▪ Norman Thomas ▪ Rowland Watts ▪ Pearl L. Willen

490

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

March 24, 1967

RCA Institute, Inc.
350 West 4th Street
New York, New York

Re:Raymond Claremont

Gentlemen:

I am an attorney for the above named client in a matter involving fair hearing before the Department of Social Welfare of the State of New York. In attempting to resolve the differences between us, the Department of Welfare of the City of New York has requested certain information regarding the attendance and possible continuation of Mr. Claremont in your institute. In particular they have asked us to set forth the following questions:1.on what dates did Mr. Claremont attend the RCA Institute and how much was actually paid by him? 2. How much' is the periodic tution and how long is the course? 3.How much longer would Mr. Claremont be required to attend in order to complete his course?4.On completion of his course of training, for what position would Mr. Claremont be equipped? 4.On completion of his course of training, what is the average salary of graduates of training programs such as the one he was enrolled?5. Does the RCA Institute guarantee employment on completion of the training program?6. What grades did Mr. Claremont achieve in his period of attendance at the Rca Institute?

Thank you very much for your cooperation in this matter.

Very truly yours,

Stephen M. Nagler

Stephen M. Nagler
Associate Counsel

SMN:n

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490

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

LOUIS SALZMAN
DISTRICT SUPERVISOR

DIVISION OF VOCATIONAL
REHABILITATION
NEW YORK DISTRICT OFFICE
225 PARK AVENUE SOUTH
(18TH STREET)
NEW YORK, NEW YORK 10003
SPRING 7-7010

X 280

March 27, 1967

Mr. Raymond Clermont
161 W. 80th St.
NYC

Dear Mr. Clermont:

Your application for service has been passed to me in order that I may discuss with you possible work opportunities or training plans or such other assistance as you may require. I want to confer with you about this and to help you work out a plan in your behalf.

I am making a definite appointment below for this interview. Please be here at that time. If you cannot report for this interview, please advise me promptly.

Very truly yours,

S. Rubin

Sidney Rubin
Rehab. Counselor

Appointment for - Monday, 4/3/67 at 9:30 a.m.
ado/

RCA INSTITUTES, INC.
A SUBSIDIARY OF RADIO CORPORATION OF AMERICA

N. MICHAEL TERZIAN
DEAN, ADMINISTRATION

March 30, 1967

Stephen M. Nagler, Esq.
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Dear Mr. Nagler:

Re: Raymond Claremont

This will acknowledge your letter of March 24th concerning Raymond Claremont.

Our policy is not to provide the type of information you requested without receiving authorization from the student. We have enclosed a Resident School Catalog for your information.

Very truly yours,

N. Michael Terzian

NMT/lng

Enclosure

350 WEST FOURTH STREET, NEW YORK, N.Y. 10014 / 212 989-2000

Student file

April 3, 1967

Mr. S. Rubin, Rehabilitation Counselor
The State Education Department, D.V.R.
225 Park Avenue South
New York, New York 10003.

Dear Mr. Rubin:

Your client, Mr. Raymond S. Clermont, has completed on 11/29/66, our Evening Preparatory Program (3 months) as a self pay student. We do not know this clients job objective. Results of his grades for the Preparatory work were-

M-111 Algebra	75%
P-001 Physics	75%

At the client request he was permitted to start in the Day V-3,V-7 Program. No record of attendance . On 2/28/67 the client signed up for the Evening classes, again no record of his attendance.

If the State is to consider sponsorship, in the day school, the following will prevail-

Program: V-7 Electronics Circuits and Systems
Tuition: 1710 hours (6 terms) $ 1761.00
Books & Supplies: approximate $ 185.00

1st term- 5/23/67- 8/11/67, no classes 5/30 & 7/4/67
Tuition: 285 hours .... $ 293.50
Books & Supplies: approximate ... $ 44.00

If the students grades, while passing, are low, training may be terminated after 3 terms and a certificate be issued for completion of the V-3 Electronics Circuits Program.

The enclosed application will have to be completed by your client, and mailed to the School to my attention.

For any further information, please contact the undersigned.

Sincerely,

W.B. Marsden

W.B. Marsden, Counselor

WBM:nsm
Encs.

April 5, 1967

Mr. N. Michael Terzian, Dean
of Administration
RCA Institutes, Inc.
350 West 4th Street
New York, New York 10004

Re:Raymond Clermont

Dear Sir:

Thank you very much for your letter of March 30th and for the catalogue which you enclosed. I appreciate and respect your desire to maintain confidentality insofar as the records of your students are concerned. For that reason I am enclosing the copy of a retainer signed by Raymond Clermont. I hope this will assure you that I am authorized by Mr. Clermont to receive such records.

Instead of reiterating the questions contained in my letter of March 24th, let me rather refer you back to that letter.

Thank you very much for much for your cooperation. If any further clarification is needed, please contact me.

Very truly yours,

Stephen M. Nagler

SMN:n

April 5, 1967

Mrs. E. Percival, Case Suprevisor
Non-Residence Welfare Center
119 West 31st Street
New York, New York 10001

Re:Raymond Clermont

Dear Mrs. Percival:

Enclosed please find a catalogue from the RCA Institute and a copy of their application form. My request for specific information regarding Raymond Clermont was denied pending an authorization from him which I have just sent on.

Your comments would be greatly appreciated.

Very truly yours,

Stephen M. Nagler
Associate Counsel

SMN:n

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

LOUIS SALZMAN
DISTRICT SUPERVISOR

DIVISION OF VOCATIONAL REHABILITATION
NEW YORK DISTRICT OFFICE
225 PARK AVENUE SOUTH
(18TH STREET)
NEW YORK, NEW YORK 10003
SPRING 7-7010

April 10, 1967

Mr. Raymond Clermont
161 W. 80th St.
NYC

Dear Mr. Clermont:

This is to remind you to send in the application which I mailed to you to the RCA Institute. Our Division has approved the first semester of the #V7 course in Electronic Circuits and Systems which will start on Tuesday, May 23, 1967. Would you please call me at SPring 7-7010 Ext. 280, any day except Wednesday, to let me know which hours you prefer for the course. The program may be taken from 8 a.m. to 1 p.m. or from 1:15 p.m. to 6:15 p.m. Kindly let me know your choice in this matter. Make sure that you mail in the application to the RCA Institute as soon as possible to the attention of Mr. W. B. Marsden, Counselor.

Thank you.

Very truly yours,

Sidney Rubin

Sidney Rubin
Rehab. Counselor

SR/ado

April 12, 1967

Mr. Raymond Clermont
97-64 Corona Avenue
Queens, New York

Re: Fair Hearing - Aid to Dependent Children

Dear Mr. Clermont:

In compliance with your request, we are scheduling a fair hearing in the matter of the adequacy of your grant of Aid to Dependent Children. The hearing will be held on Wednesday, May 3, 1967, at 10:00 a.m., at the Area Office, 270 Broadway, New York, New York, on the 16th floor.

Please be advised that you may be accompanied to the hearing by any person whom you wish to have assist you in the presentation of your case.

You may examine the documents and/or written records to be introduced at the hearing by the local public welfare department, provided that you or your attorney make a request therefor in writing to Honorable Mitchell I. Ginsberg, Commissioner of Welfare, 250 Church Street, New York, New York, 10013, at least 10 days before the date of the hearing, and send a copy of your demand to the Office of Counsel of the State Department of Social Welfare, 112 State Street, Albany, New York 12201.

If, for any reason, you are unable to attend the hearing or wish to withdraw your request for a hearing, please notify the Area #6 Office, 270 Broadway, New York, New York and the New York City Department of Welfare, 250 Church Street, New York, New York.

For your information, we are enclosing a memorandum describing the fair hearing procedure.

We are sending you the original of this letter by certified mail and a copy by ordinary mail, to make certain that you are notified of this hearing.

Very truly yours,

William J. Carr

WILLIAM J. CARR
Referee

Enc.
Certified Mail

Adjourn to 5/10

April 18, 1967

William J. Carr, Referee
State of New York
Department of Social Welfare
270 Broadway
New York, New York

Re:Raymond Clermont

Dear Sir:

Thank you very much for the copy of your letter regarding the above named client. As you know I am his attorney and will represent him at the fair hearing. Unfortunately, however, I am actually engaged on May 3, 1967, and I therefore respectfully request that the hearing be adjourned to May 10, 1967. If this date is not convenient please contact me so that we may make alternate arrangements.

Very truly yours,

Stephen M. Nagler
Associate Counsel

SMN:n

April 18, 1967

Hon. Mitchell I. Ginsberg
Commissioner
New York City Department of Welfare
250 Church Street
New York, New York

Dear Commissioner Ginsberg:

As you know I represent Raymon Clermont in a fair hearing to take place early in May.

I hereby request that pursuant to Rule 356 of Rules and Regulations of the Department of Social Welfare of the State of New York, that you forward to me the copy of any material from the case record or otherwise which you propose to introduce on behalf of the local agency at the scheduled fair hearing. I further request pursuant to Rule 357 that within a reasonable time you allow me to examine the case record of this client so that I may ascertain whether or not there is anything which may be of benefit to the client in making his presentation at the hearing. Please understand that under the law I have a confidential attorney-client relationship with Mr. Clermont and that Mr. Clermont fully waives his privilege of confidentiality with regard to the case record insofar as I am concerned.

Thank you for your consideration.

Very truly yours,

Stephen M. Nagler

SMN:n
CC:Office of Counsel
State Dept. Social Welfare

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

April 20, 1967

Miss Volpe (01-5)
Non-Residence Welfare Center
119 West 31st Street
New York, New York

Dear Miss Volpe:

On 4/17/67 R. Clermont found a housekeeper named Marion Buckingham. She starts at 6:30 A.M. and finishes work officially at 5:30 P.M. These hours coincide with those in which Mr. Clermont is absent from the household. She will be getting $40 weekly for her services. We respectfully request that this sum be added to Mr. Clermont's budget. I understand that on your last visit to the household, Mr. C. mentioned the prospect of his finding a housekeeper to you.

Very truly yours,
Stephen M. Nagler
Stephen M. Nagler

SMN:n
CC:William J. Carr
Referee, N.Y.S. Dept.
Social Welfare
270 Broadway

P.S. Your computation of the family budget is off by $10. Item 19 should be $20 for 4/1 - 4/16. As of 4/17 when the housekeeper started $10 is correct. Please check your "Handbook"(page II 7a).

Contributions are deductible for income tax purposes

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April 21, 1967

Mr. Raymond Clermont
97-64 Corona Avenue
Queens, New York

Re: Fair Hearing - Aid to Dependent Children

Dear Mr. Clermont:

In compliance with the request of your attorney, we are rescheduling the fair hearing in the matter of the adequacy of your grant of Aid to Dependent Children. The hearing will be held on Friday, May 12, 1967, at 2:00 p.m., at the Area Office, 270 Broadway, New York, New York, on the 16th floor.

Please be advised that you may be accompanied to the hearing by any person whom you wish to have assist you in the presentation of your case.

You may examine the documents and/or written records to be introduced at the hearing by the local public welfare department, provided that you or your attorney make a request therefor in writing to Honorable Mitchell I. Ginsberg, Commissioner of Welfare, 250 Church Street, New York, New York, 10013, at least 10 days before the date of the hearing, and send a copy of your demand to the Office of Counsel of the State Department of Social Welfare, 112 State Street, Albany, New York 12201.

If, for any reason, you are unable to attend the hearing or wish to withdraw your request for a hearing, please notify the Area #6 Office, 270 Broadway, New York, New York and the New York City Department of Welfare, 250 Church Street, New York, New York.

For your information, we are enclosing a memorandum describing the fair hearing procedure.

We are send you the original of this letter by certified mail and a copy by ordinary mail, to make certain that you are notified of this hearing.

Very truly yours,

WILLIAM J. CARR
Referee

Enc.
Certified Mail

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
112 STATE STREET
ALBANY

GEORGE K. WYMAN
COMMISSIONER

FELIX INFAUSTO
COUNSEL AND BOARD SECRETARY

518 ~~474-2121~~
GR4-4924

April 21, 1967

Stephen M. Nagler, Esq.
c/o Scholarship, Education and
Defense Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York

RE: CLERMONT, Raymond

Dear Mr. Nagler:

Receipt of your letter of April 18, 1967 in connection with the above hearing is hereby acknowledged.

Pursuant to our conversation, we will schedule this hearing for May 12, 1967, at 2:00 p.m.

Very truly yours,

WILLIAM J. CARR
Referee

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

April 26, 1967

Mr. Stephen M. Nagler
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: CLERMONT, Raymond
97-64 Corona Avenue
Queens, New York

Dear Mr. Nagler:

In our previous letter to you we indicated that we would communicate with you again after we had reviewed Mr. Clermont's situation with the New York City Department of Welfare.

We have now received reports from the New York City Department of Welfare which indicate that Mr. Clermont's request for a Fair Hearing was acknowledged and discussed with him on March 17, 1967. These reports further indicate that special grants were issued in the amount of $260.40 for rent covering the period February 11, 1967 through April 10, 1967. Another special grant was issued for rent for the period April 11 through April 15, 1967 and an allowance for rent was added to the recurring grant as of April 16, 1967. We understand that Mr. Clermont's budget was revised effective May 1, 1967 on the basis of weekly earnings of $70 per week since Mr. Clermont is currently working overtime. His new semi-monthly grant will be $57.45.

The New York City Department of Welfare has also informed us that special grants were issued on April 3 and April 4, 1967 totaling $71.15 and $403.45 for clothing and household furniture and furnishings. These grants were intended to bring the family up to minimum standards since much of their clothing and household furniture and furnishings had been destroyed by fire.

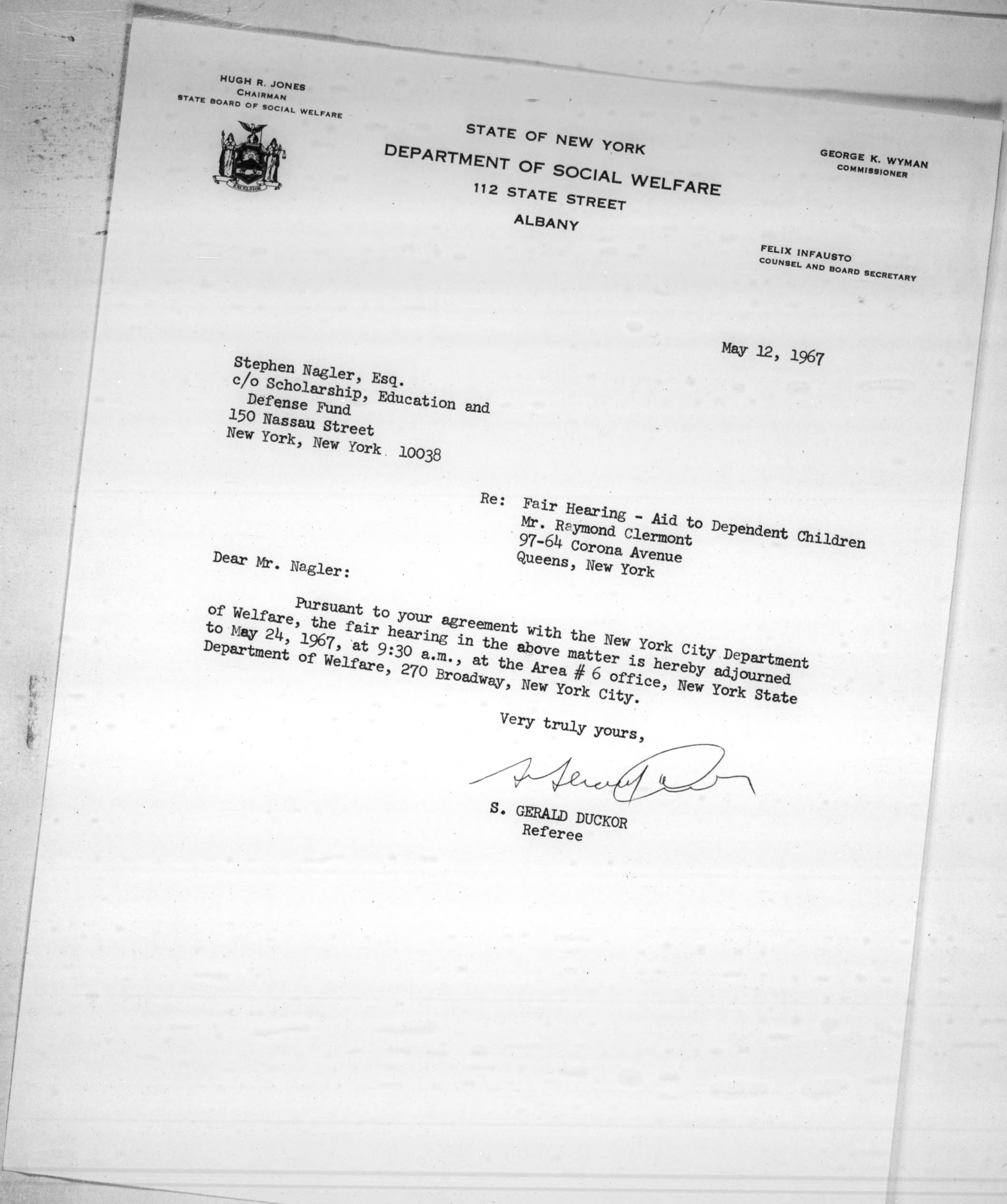
We have also been advised that Mr. Clermont will begin training on May 23, 1967 at the RCA Institute in accordance with a plan for rehabilitation developed by the New York State Division of Vocational Rehabilitation. All expenses for tuition and books will be paid by DVR under the Preparation, Retraining and Education Program.

We trust that the action taken by the New York City Department of Welfare answers Mr. Clermont's request for a Fair Hearing satisfactorily. Will you kindly advise this office by May 5, 1967 whether or not Mr. Clermont wishes to continue with his request for a Fair Hearing.

Very truly yours,
Eleanor Blakely
(Mrs.) Eleanor Blakely
Senior Welfare Consultant

$91.90 – letter adjusting budget re=
job at $70. weekly & removal of
Patrick Jael.

$91.90 – letter adjusting budget fl=
job at $70. weekly & removal of
Patrick Joel.



HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
112 STATE STREET
ALBANY

GEORGE K. WYMAN
COMMISSIONER

FELIX INFAUSTO
COUNSEL AND BOARD SECRETARY

May 12, 1967

Stephen Nagler, Esq.
c/o Scholarship, Education and
Defense Fund
150 Nassau Street
New York, New York 10038

Re: Fair Hearing - Aid to Dependent Children
Mr. Raymond Clermont
97-64 Corona Avenue
Queens, New York

Dear Mr. Nagler:

Pursuant to your agreement with the New York City Department of Welfare, the fair hearing in the above matter is hereby adjourned to May 24, 1967, at 9:30 a.m., at the Area # 6 office, New York State Department of Welfare, 270 Broadway, New York City.

Very truly yours,

S. GERALD DUCKOR
Referee

May 16, 1967

S. Gerald Duckor, Referee
State of New York Department
of Social Welfare
112 State Street
Albany, New York

Re:Fair Hearing, Aid to Dependent Children
Raymond Clermont
97-64 Corona Avenue
Corona, New York

Dear Mr. Duckor:

I have discussed date proposed in your letter with my client. He finds the hour unsuitable. Mr. Clermont will start a training program on May 23rd. His hours are from 8 a.m. to 1:30 p.m.. It would be unfortunate to have him miss the second day of his course. Any afternoon during that week would be satisfactory.

Very truly yours,

Stephen M. Nagler

SMN:n
CC:To
Mr. Epstein, Legal Divn. N.Y.C.Dept. of Welfare
Mrs. Eleanor Blakely, SR. Welfare Consultant
N.Y.S. Dept. of Social Welfare
270 Broadway, N.Y.

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
112 STATE STREET
ALBANY

GEORGE K. WYMAN
COMMISSIONER

FELIX INFAUSTO
COUNSEL AND BOARD SECRETARY

May 18, 1967

Stephen Nagler, Esq.
c/o Scholarship, Education and
Defense Fund
150 Nassau Street
New York, New York 10038

Re: Fair Hearing - Aid to Dependent Children
Mr. Raymond Clermont
97-64 Corona Avenue
Queens, New York

Dear Mr. Nagler:

Pursuant to your request, the fair hearing in the above matter will be held at 2:30 p.m. on May 24, 1967, at the Area #6 Office, New York State Department of Social Welfare, 270 Broadway, New York City.

Very truly yours,

S Gerald Duckor

S. GERALD DUCKOR
Referee

GD/ap

Law Offices

HARRY T. SHERMAN

55 John Street, New York, N. Y. 10038

(212) 267-8112

HARRY T. SHERMAN
HIPPOCRATES P. KOURAKOS

June 9, 1967

Mr. Kenneth Nagler
150 Nassau Street
New York, N. Y. 10038

Re: Raymond Clarmont

Dear Mr. Nagler:

I am enclosing herein bill for services rendered to Raymond Clarmont in relation to the writ of habeas corpus proceeding.

I wish to advise you that the services included attendance in the Supreme Court, Queens County on two seperate occasions, conferences with the client and interviews with his two oldest children as well as expense of negotiations with Shirley Schwartz, Esq. from the Legal Aid Society.

Under normal circumstances, our fee for services rendered would have been approximately double that charged to Raymond Clarmont. I hope the within suffices.

Very truly yours,

Hippocrates P. Kourakos

HPK:rl
Enc.

Law Offices
HARRY T. SHERMAN

55 John Street, New York, N. Y. 10038
(212) 267-8112

HARRY T. SHERMAN
HIPPOCRATES P. KOURAKOS

June 9, 1967

To: Raymond Clarmont

Re: The People of the State of New York, ex rel: Laurente Clarmont on behalf of Raphael, Raymonde, Alexandra, Phillipe and Patrick Clarmont, infants,

-against-

Raymond Clarmont

For services rendered	$150

June 9, 1967

S. Gerald Ducker
Referee,
Office of Counsel
Department of Social Welfare
112 State Street
Albany, New York

Dear Mr. Duckor:

Enclosed please find a copy of a birth certificate for Elinor Buckingham's youngest child, Septima, alluded to in the hearing. I asked leave to add the certificate to the record as an exhibit and leave was granted. The matter in question was the paternity of the child.

Very truly yours,

Stephen M. Nagler

SMN:n
CC:Marvin Eqstein, Esq.
Legal Dept., N.Y.C. Dept. of Welfare
Mrs. Elinor Blakely, Sr. Req.
N.Y.S. Dept, of Social Welfare

The City of New York
DEPARTMENT OF WELFARE
250 CHURCH STREET, NEW YORK, N. Y. 10013
Telephone: 344-8700

MITCHELL I. GINSBERG, Commissioner

W-1

In reply refer to:
M. Epstein, Legal Division

June 15, 1967

S. Gerald Duckor, Referee
State Department of Social Welfare
112 State Street
Albany, New York

Re: Fair Hearing
Raymond Clermont

Dear Mr. Duckor:

With reference to the appellant's request that the New York City Department of Welfare provide him with a grant to enable him to pay for attorney's services previously furnished him by a private attorney at his own request, it is the position of this Department, based upon Bulletin 134 of the State Department of Social Welfare and Chapter 7 of this Department's manual, "Policies Governing the Administration of Public Assistance", that there is no provision for this Department to provide such a grant.

Very truly yours,

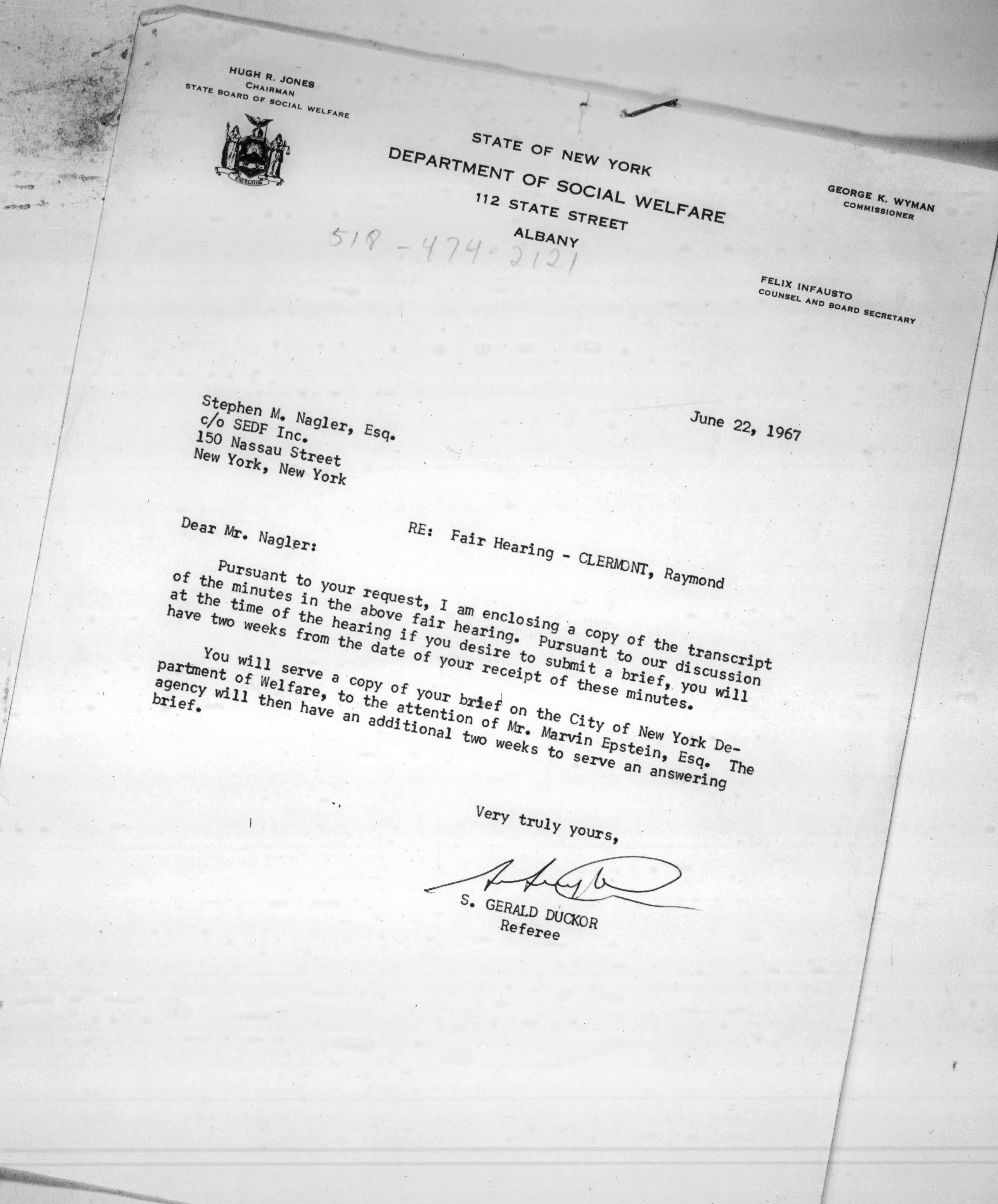
LOUIS AGIN, Director
Bureau of Resources and
Legal Services

ME:ff

By Marvin Epstein
Marvin Epstein, Attorney

CC: Stephen M. Nagler, Esq.
Scholarship, Education & Defense Fund
for Racial Equality, Inc.
150 Nassau Street, New York, N. Y.10038

Mrs. Elinor Blakely, Sr. Rep.
New York State Dept. of Soc.Welfare
270 Broadway, New York, N. Y. 10007



HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
112 STATE STREET
ALBANY

GEORGE K. WYMAN
COMMISSIONER

FELIX INFAUSTO
COUNSEL AND BOARD SECRETARY

518-474-2121

Stephen M. Nagler, Esq.
c/o SEDF Inc.
150 Nassau Street
New York, New York

June 22, 1967

RE: Fair Hearing - CLERMONT, Raymond

Dear Mr. Nagler:

Pursuant to your request, I am enclosing a copy of the transcript of the minutes in the above fair hearing. Pursuant to our discussion at the time of the hearing if you desire to submit a brief, you will have two weeks from the date of your receipt of these minutes.

You will serve a copy of your brief on the City of New York Department of Welfare, to the attention of Mr. Marvin Epstein, Esq. The agency will then have an additional two weeks to serve an answering brief.

Very truly yours,

S. GERALD DUCKOR
Referee

July 11, 1967

Hon. S. Gerald Duckor
Referee
Department of Social Welfare
State of New York
112 State Street
Albany, New York

Re:Fair Hearing - Clermont, Raymond

Dear Mr. Duckor:

I just returned from a two week vacation and found your letter and the minutes in the above entitled case on my desk.

I immediately called Marvin Epstein, attorney for the Department of Welfare of the City of New York and asked for his consent to an extension of time in which to submit a brief on the issue of "Counsel fees". He generously consented.

I therefore request an extension to July 25th, 1967 for the submission of a brief on this very important issue.

As to the other issues with which the hearing was concerned, since the record is complete and since there is no plan to submit briefs, I hope that we may have some expeditious resolution in the interim. Mrs. Buckingham and her children which are living in the most difficult circumstances which payment for her services as housekeeper could alleviate. Thank you for your kind consideration.

Very truly yours,

Stephen M. Nagler

SMN:n

Augu , 1967

Mr. Gerald Duckor
Referee
New York State Department of
Social Services
112 State Street
Albany, New York

Dear Mr. Duckor:

After much ado, work, ballyhoo, etc., comes now the Appellant, Raymond Clermont, by his attorney, Stephen M. Nagler, with his long awaited brief on the issue of legal fees.

Thanks for your patience. We await your pleasure.

Cordially,

Stephen M. Nagler

SMN:n
P.S. A copy is being served contemporaneously on the city agency.

August 8, 1967

Marvin Epstein, Esq.
Legal Bureau
Department of Social Services
City of New York
250 Church Street
New York, New York

Re: Fair Hearing-Raymond Clermont

Dear Mr. Epstein:

Enclosed please find a copy of our brief on legal fees in the above entitled case.

Thanks for consenting to give us the necessary time to prepare this "magnum opus".

Cordially,

Stephen M. Nagler

SMN:n

August 8, 1967

Brian Glick, Esq.
Center on Social Welfare
Policy and Law
Columbia University School of Social Work
401 West 117th Street
New York, New York 10027

Dear Brian:

Enclosed with our thanks for your help is a copy of the Clermont brief.

I will hereafter send you a copy of any brief concerning welfare which we produce.

Sincerely,

Stephen M. Nagler

SMN:n

~~XXXXXXXXX~~ SOCIAL SERVICES

Ext.591

In reply refer to:
Marvin Epstein
Legal Division

August 15,1967

S. Gerald Duckor, Referee
State Department of Social Welfare
112 State Street
Albany, New York

Re: FAIR HEARING
Raymond Clermont

Dear Mr. Duckor:

In response to the Appellant's Brief in which he makes claims for the issuance to him of a grant to enable him to pay for attorney's services previously furnished to him by a private attorney at his own request, this agency reiterates its position as set forth in my letter to you on June 15, 1967 that there is no provision under the regulations for this Department to make such a grant.

Very truly yours,

LOUIS AGIN, Director
Bureau of Resources
and Legal Services

BY: Marvin Epstein
Marvin Epstein

ME:eb

cc: Stephen N. Nagler, Esq.
Scholarship, Education & Defense Fund
for Racial Equality, Inc.
150 Nassau Street
New York, N.Y. 10038

Mrs. Elinor Blakely Sr.Rep.
New York State Department of Social Welfare
270 Broadway
New York, N.Y.

October 18, 1967

Raymond Clermont
97-64 Corona Avenue
New York, New York

RE: Fair Hearing

In compliance with your request we are scheduling a fair hearing. The hearing will be held at the New York Area Office of this Department, 270 Broadway, New York, New York on November 2, 1967 at 10:30 a.m.

For your convenience, we suggest that you arrive shortly before the time that your hearing is scheduled and that you wait in this Department's reception room on the Lobby floor until your case is called.

Please be advised that you may be accompanied to the hearing by any person whom you wish to have assist you in the presentation of your case.

If, for any reason, you are unable to attend the hearing or wish to withdraw your request for a hearing, please notify the Area #6 Office, 270 Broadway, New York, New York and the New York City Department of Social Services, 250 Church Street, New York, New York.

We are sending you the original of this letter by certified mail and a copy by ordinary mail, to make certain that you are notified of this hearing.

Very truly yours,

ROBERT B. KEYES
Supervisor of Referees

Certified Mail
cc:

D. Gilman

Scholarship, Education and Defense Fund
150 Nassau Street
New York, New York 10038

#15,269

October 24, 1967

Mr. Robert B. Keyes
Supervisor of Referees
State of New York Department
of Social Services
270 Broadway
New York, New York 10007

Re:Fair Hearing
Raymond Clermont

Dear Mr. Keyes:

In view of the fact that my hearing schedule for the morning of November 2nd, 1967, is exceedingly heavy, I hereby request that the above entitled fair hearing be adjourned.

It is hoped that in the interim, the issues will be happily resolved.

Very truly yours,

Stephen M. Nagler

SMN:n
CC:Hon. Mitchell I. Ginsberg

Mr. Nagler

October 27, 1967

Mr. Raymond Clermont
97-64 Corona Avenue
Queens, New York

Dear Mr. Clermont:

Enclosed is the fair hearing decision dated October 27, 1967 in your appeal to this department.

Very truly yours,

WILLIAM J. CARR
Referee

Enc.

cc: Mr. Louchheim, Area #6
Stephen Nagler, Esq. ✓

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

112 STATE STREET • ALBANY

HUGH R. JONES
Chairman
State Board of Social Welfare

GEORGE K. WYMAN
Commissioner

RESCHEDULED HEARING

December 27, 1967

Raymond Clermont
97-64 Corena Ave.
New York, N. Y.

RE: Fair Hearing

In compliance with your request we are scheduling a fair hearing. The hearing will be held at the Fair Hearing Office of this Department, 117 Liberty Street, New York, New York, twelfth floor, on January 10, 1968 at 1:30.

For your convenience, we suggest that you arrive shortly before the time that your hearing is scheduled.

Please be advised that you may be accompanied to the hearing by any person whom you wish to have assist you in the presentation of your case.

If, for any reason, you are unable to attend the hearing or wish to withdraw your request for a hearing, please notify the Area #6 Office, 270 Broadway, New York, New York and the New York City Department of Social Services, 250 Church Street, New York, New York.

Very truly yours,

ROBERT B. KEYES
Supervisor of Referees

cc: SEDF
150 Nassau St.
New York, N. Y.

January 24, 1968

Jesse Moskowitz, Esq.
880 Bergen Avenue
Jersey City, New Jersey

Re:Marion Eleanor Buckingham

Dear Jesse:

Since we talked last summer about this case, a lot of water has passed under the bridge. As you will recall (I hope) the client applied for a job as a housekeeper for Raymond Clermont. Mr. Clermont was a recipient of public assistance with children. He attends school and the housekeeper was approved by the City Department of Welfare. When Clermont told them that our our client was his candidate, and where she came from, they began a "security check" and found that Marion was a recipient of welfare in Hudson County (Jersey City). Clermont's unit supervisor, a man named Kelleher, called Hudson County and spoke to Mildred Barone. She sent him the enclosed "exhibit". They used certain allegations contained in the exhibit to refuse to pay our client. The important fact is that Marion did not apply for assistance inNew York, but rather employment. She never authorized New York to investigate and, more important, never authorized Hudson to release confidential records. The interference with her advantageous relations is obvious.

The"outline " enclosed is a very rough draft prepared by a law student after intensive research. Can you still help us?

Very truly yours,

Stephen M. Nagler

SMN:n

JESSE MOSKOWITZ
LAW OFFICES

RECEIVED

JAN 30 1968

SEDF

880 BERGEN AVENUE
JERSEY CITY 6, N. J.
(201) 798-1787
1788

January 29, 1968

SEDF
150 Nassau Street
New York, New York 10038

Dear Mr. Nagler:

Re: Marion Eleanor Buckingham
Attn: Mr. Stephen M. Nagler

I would still be glad to "help" you in this matter and institute whatever action is required to vindicate the rights of your client in this matter.

I would suggest you ask her to arrange to see me so that I can personally discuss the situation with her and ascertain the extent of her financial loss as the result of the situation herein.

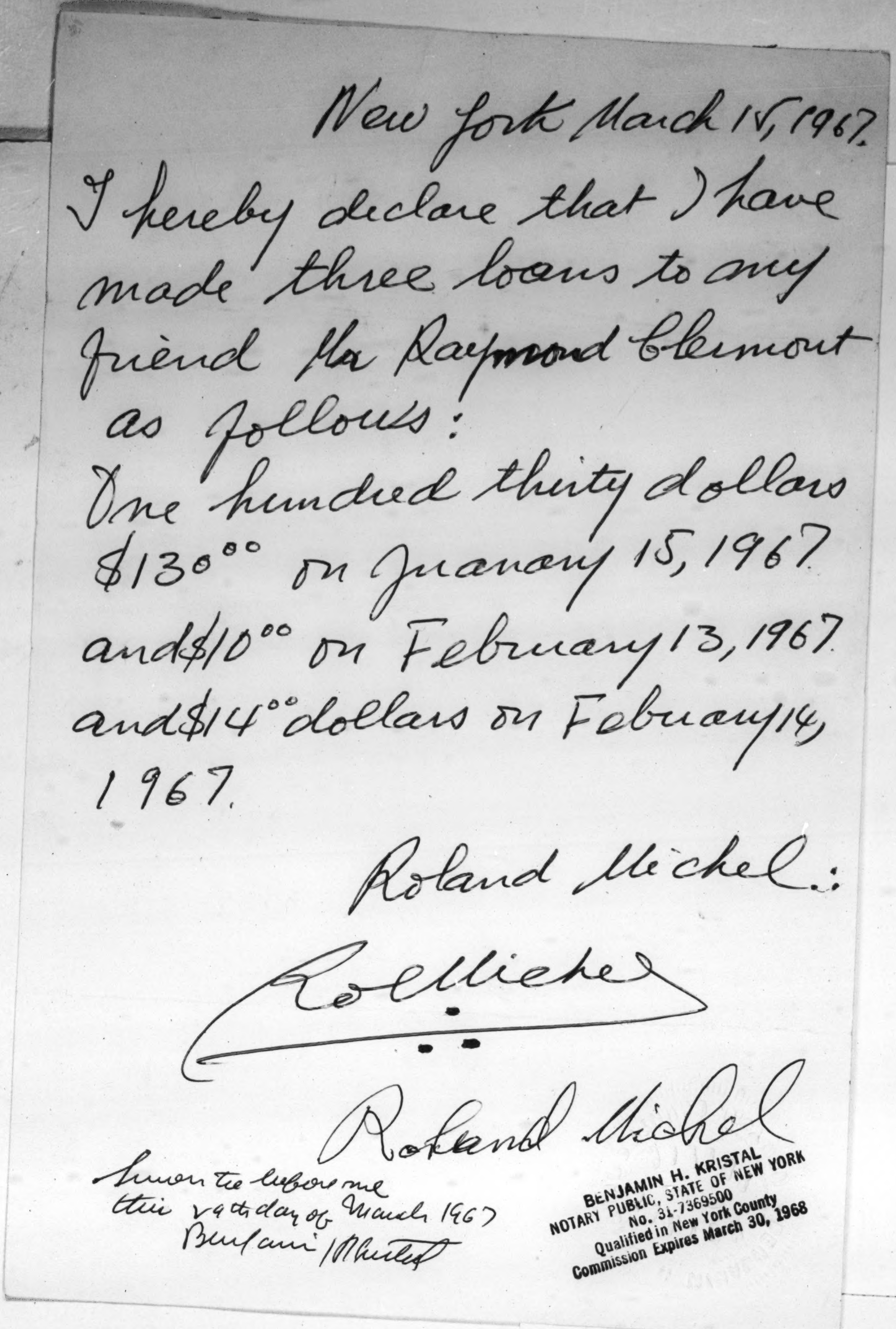
The question of fee is not of any moment at this time. However, how about the disbursements required?

Very truly yours,

Jesse Moskowitz

Jesse Moskowitz

JM/ml



New York March 15, 1967.

I hereby declare that I have made three loans to my friend Ma Raymond Clermont as follows:

One hundred thirty dollars $130.00 on Juanary 15, 1967 and $10.00 on February 13, 1967 and $14.00 dollars on Febuary 14, 1967.

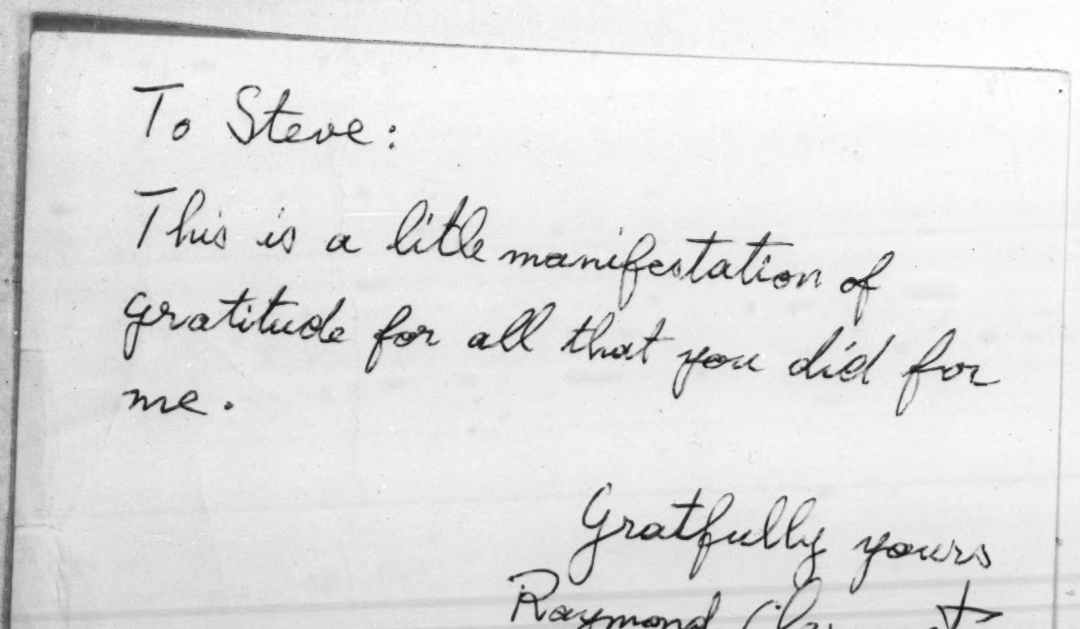
Roland Michel.:

Ro Michel

Roland Michel

Sworn to before me
this 29th day of March 1967
Benjamin Kristal

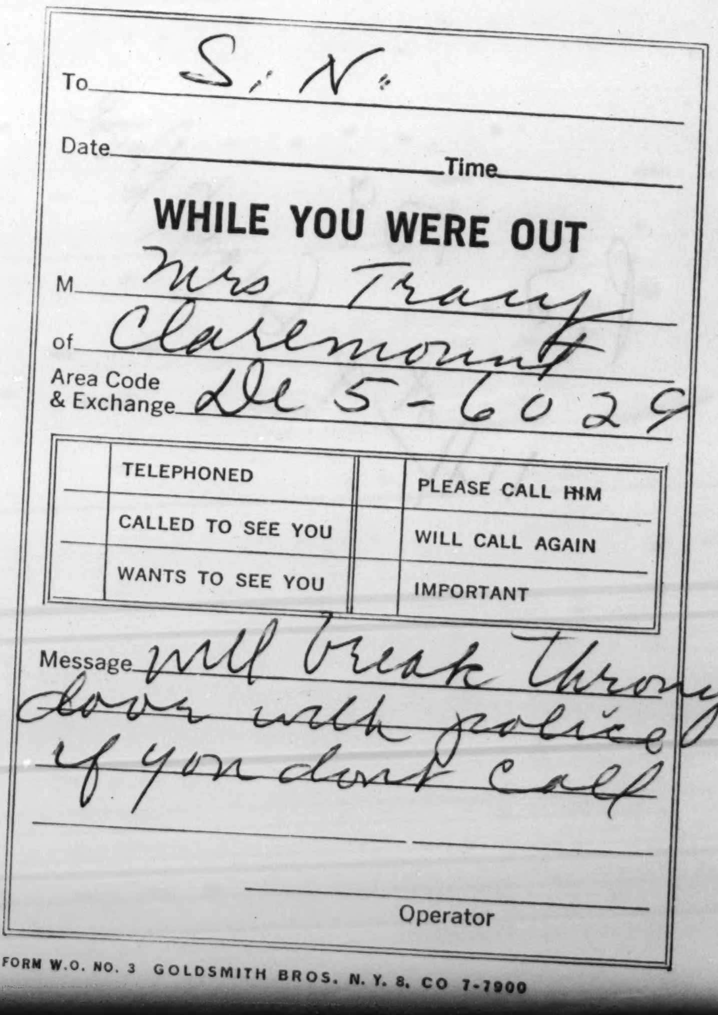
BENJAMIN H. KRISTAL
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-7369500
Qualified in New York County
Commission Expires March 30, 1968



To Steve:

This is a litle manifestation of gratitude for all that you did for me.

Gratfully yours
Raymond Clermont.



To S. N.

Date ____ Time ____

WHILE YOU WERE OUT

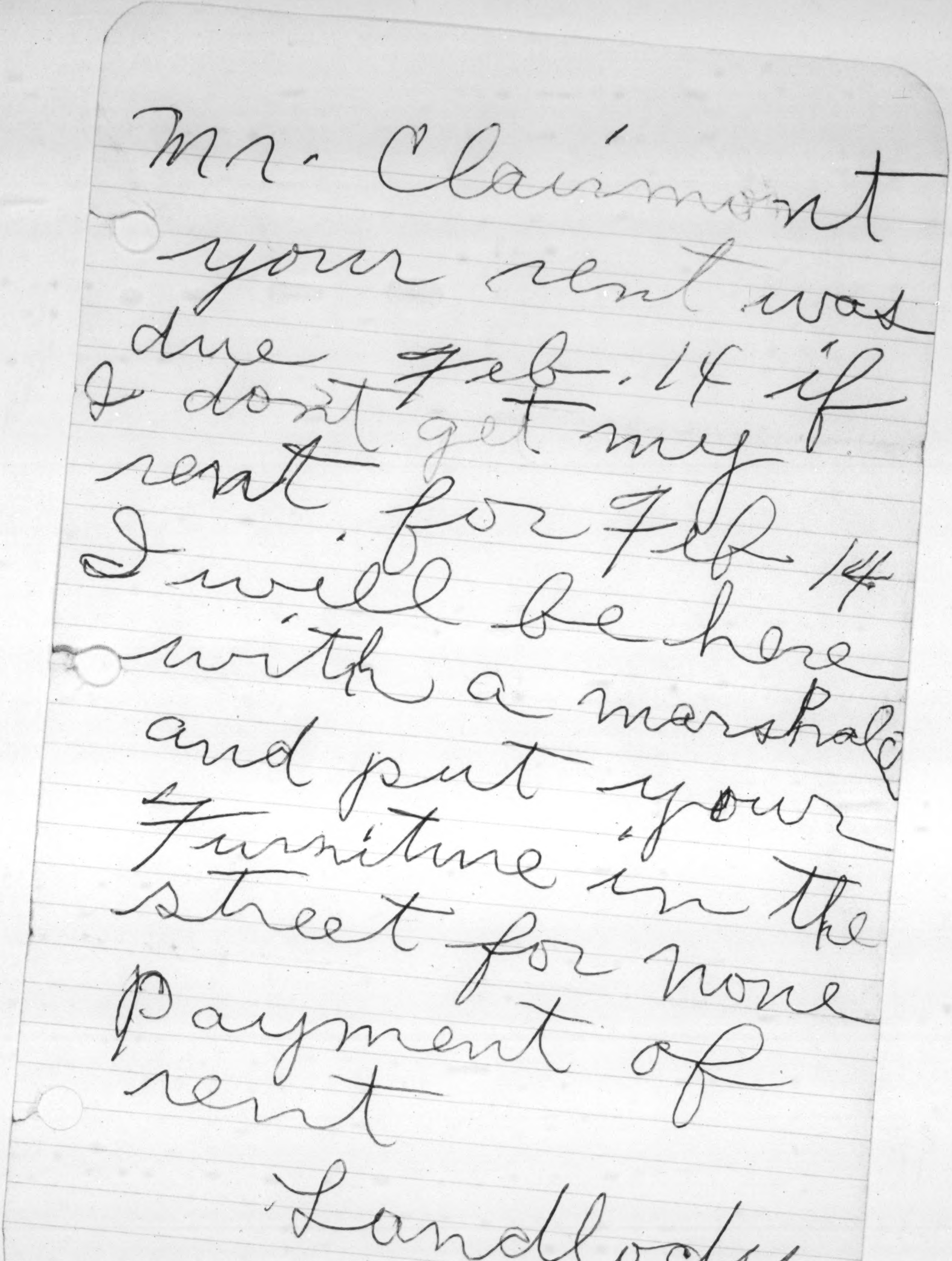
M Mrs Tracy
of Claremount
Area Code & Exchange DE 5-6029

TELEPHONED	PLEASE CALL HIM
CALLED TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	IMPORTANT

Message will break through door with police if you don't call

Operator

FORM W.O. NO. 3 GOLDSMITH BROS. N.Y. 8, CO 7-7900



Mr. Clairmont
your rent was
due Feb. 14 if
I don't get my
rent for Feb 14
I will be here
with a marshall
and put your
Furniture in the
street for none
Payment of
rent

Landlody

2

3/10/67

1) Told at reception, after I identified myself and my relationship to Mr Claremont, that probably a superior case supervisor would see me. I had asked for Mrs Bradshaw. The time was approx 3:30 PM

2) Spoke to Mr Taylor and Mrs Bradshaw with Mr. Claremount. I was asked by Mr Taylor questions about Mr Nagler's and my association with SEDF and all about SEDF. I was told that Mr. Claremount could only receive an emergency assistance but not his bi-monthy check because this bi-monthly check includes rent and since [illegible] no signed lease or written statement signed by landlord giving the full arrangements has been received by Welfare. I was allowed to see the receipt for the deposit which said "Deposit for rent for apartment." The address was noted as was the date 1/25/67. Mr Taylor said that the sample lease in conjunction with this receipt was insuffecient evidence because he did not know what "deposit" means. He was unwilling to call the landlord and resolve any ambiguity by speaking to the landlord. I was told that if I and Mr. Clemont came in on ~~without no written statement from landlord~~

Stephen Schlakman

answered all questions

monday with the signed lease, we may
be able to get the check. The decision
is up to Mrs. Percival but we were to see
Mr Taylor. Mr Taylor said that it was
extremely unlikely that if Mr Claremont came
in with a signed lease or its equivalent
that he would get the check because they
don't trust him. 3-4 days ago it was
decided that the case be given to Mr. Taylor
according to Mrs. Bradshaw

3) Then Mr Taylor called Miss Garvitz before
us and asked her if she had told a Mr
Jones from a hospital that he (Mr Taylor)
was persecuting Mr. Claremont. She
replied that she said she felt that he
had treated Mr Claremont improperly
but ~~was~~ was not willing to say whether
or not she felt that he was persecuting
Mr. Claremont. Then Mr. Taylor got Mr.
Claremont's wife's former caseworker
Both she & Miss Garvis were introduced
to me and were examined by
Mr Taylor despite my protests that it
was unnecessary and I was not
personally involved in the case. This
caseworker gave the history of her association
with Mr Claremont in response to question
of whether she had told the same Mr
Jones that Mr Taylor was persecuting

Stephen Schlakman

3

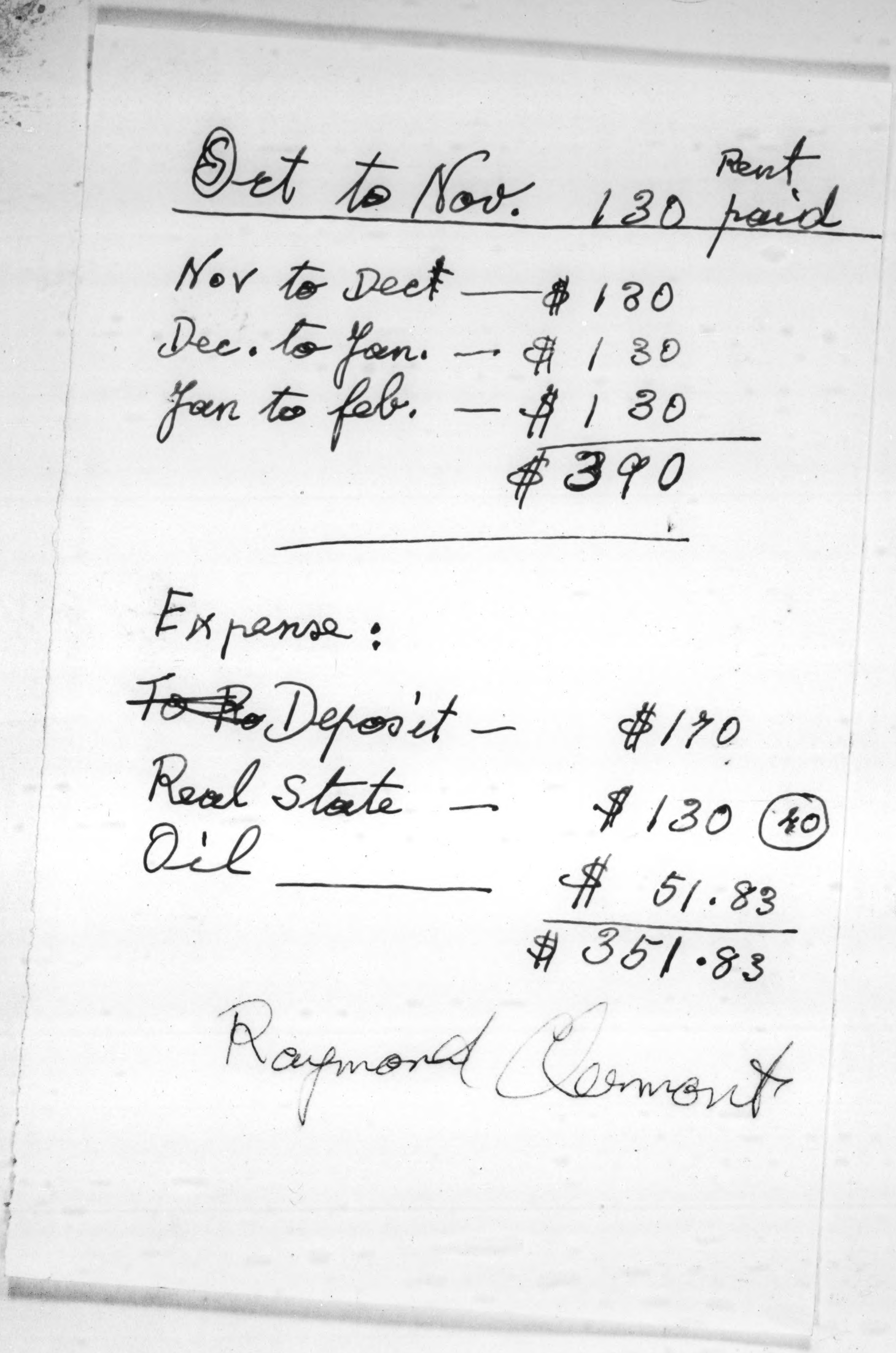
Mr Claremont. Finally she said that she felt that Welfare tried to treat everyone fairly. She left & Mr. ~~[illegible]~~ Taylor started asking Mr. Claremont some questions. I interrupted saying that I was instructed to say that Mr Nagler did not want Mr. Claremont to answer any questions unless Mr. Nagler was there. Mr Taylor asked Mr Claremont if he would answer any questions. Mr Claremont said that he felt that he had already ~~answered~~ given ~~[illegible]~~ Welfare all the information that he could.

4) Mr Taylor gave me & I gave to Mr Claremont a check for something like $20 and said that on the 14th he would receive a check for the same amount.

5) Mr Taylor was quite anxious of I & Mr. Claremont would come back on Monday. I said I couldn't say for sure

6) Mr Taylor asked me if I had ever met either of the caseworkers he had questioned & I said to the best of my knowledge no

Stephen Schlakman



Oct to Nov. 130 Rent paid

Nov to Dect —	$ 130
Dec. to Jan. —	$ 1 30
Jan to feb. —	$ 1 30
	$ 390

Expanse:

~~To Re~~Deposit —	$170
Real State —	$ 130 (40)
Oil ———	$ 51.83
	$ 351.83

Raymond Clermont

FORM W-670 (REV. 3/24/66) 500M-M505050
PART 1 NOTICE TO CLIENT

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

BUDGET PLAN

FOLD

WC	CHG	CASE NUMBER
53		2508457
1441228		

CLERMONT RAYMOND
97 64 CORONA AVE FLG 68

LINE NO.	SUFF	CATEGORY	PAYEE	PERSONS INCLUDED IN BUDGET	SEX	STAT	BIRTH MO	BIRTH YR		NEEDS–INCOME	ADC
01	1	ADC	*	CLERMONT RAYMOND	M	U	12	28	ABCD	FOOD	63.80
02	1			RAPHAEL	M	S	06	54	ABCD	PERSONAL CARE	5.15
03	1			YAMILEE	F	S	01	56	ABCD	CLOTHING	24.35
04	1			THEODORA	F	S	04	58	ABCD	H.H.SUPPLIES	2.50
05	1			PHILIPPE	M	S	05	59	ABCD	SHELTER	65.00
										LAUNDRY	4.90
										TOTAL NEEDS	165.70
										NET DEFICIT	165.70
										PRORATION	165.70

TYPE OF ASSISTANCE (OR L.R.R.)

070851

DATE RECURRING	10 1 67
DATE PRORATION	09 16 67
DATE SING. ISSUE	
CASELOAD NO.	144
	011

FOLD

TYPE CASE	ADDRESS	PZ–BORO ZIP CODE	HEALTH AREA INST. CODE	RMS	
	97 64 CORONA AVE FLG	68	41500	4	LNP

(OVER)

I Raymond Clermont, 97-64 Corona Avenue, Queens (case # 2508457), authorize Car Rachlin and Stephen M. Nagler or any attorney associated with them to represent me in any proceeding before the departement of social welfare of the State of New York, the departement of welfare of the City of New York and any judicial proceeding which may be necessary in my behalf.

Raymond Clermont.

Dated: New York N.Y.
March 9th, 1967

Clermont

Form PA-2D (Rev. 11/66) (SU)

NAME Marion Buckingham
ADDRESS 92 Van Wagenen Avenue
Jersey City, N. J.

REGISTRATION NO. HC-6435
COMPANION CASE

SUMMARY REPORT

DATE

3/6/67 - Home Visit.

TELEPHONE:

None. Client has not paid rent for 2 1/2 months address unk.

DEFINED SERVICES:

Client was told to keep her home a little neater and cleaner.

CLIENT:

Client is a middle aged white female, very cooperative but does not give a extremely good appearance. Client was raised by her mother and father and is one of 8 children. Client is a high school graduate. Client was married in 1947. Client lived with her husband for approximately 10 years. Client was a welfare recipient in possibly 1950, in Pennsylvania. Client also did odd jobs in Pennsylvania. Client's occupation is that of a domestic. Client was married a 2nd time in 1961. Client is divorced from both her first and second husband. Client's income is presently from the Hudson County Welfare Board, with a small amount coming from court orders.

Client's first husband is Warren Brink, born in Pennsylvania. He is supposedly on a $7.50 court order per week from the courts in Pennsylvania. This individual is supposedly working for Gumble Bros., in Tautack, Pennsylvania. He lives in Arielrdi, Pa.

Client's 2nd husband whom she has no children by is Jesse Denson, age approximately 45, educational level 8th grade. Present address, whereabouts and location unknown. Client is divorced from this individual.

Putative father of the client's last child, Raymond Claremont. This individual is on a court order to pay the client $10 a week for the child he fathered.

CHILDREN IN THE HOME:

Cynthia Brink - born Lake Ariel, Pa., 6/9/53. This individual attends P. S. 23, in the 8th grade and

Diane Brink - is in P. S. 23 elementary school in special class has passed everything and was born in Pennsylvania 12/15/57.

Septema Buckingham - born 7/27/66. This child is pre-school and seems to be fairly well taken care of.

A elder child roomer boarder in the home, Lois Gail Brink, age 18, this individual works for the Home Insurance Company, in New York City, 1 Maiden Lane, and pays her mother rent as a roomer boarder. This girl is also going to be married in June.

HOUSING ARRANGEMENTS:

Rent for this apartment is $126, this includes all utilities. Client has 6 rooms which are divided, 3 of the client's rooms which were the bedroom, kitchen, and living room, were relatively clean. The other 3 rooms adjacent which are bedrooms were extremely filthy. The client has a T. V., and 4 beds and a crib.

LEGALLY RESPONSIBLE RELATIVES:

Client's mother and father are Mr. & Mrs. Frank Buckingham. They live at Shady Lane, Holmesdale, Pennsylvania.

HEALTH:

Health of the client and family is good.

OTHER RELATIVES:

Client mentioned a brother and sister, William Buckingham, of Shady Lane, Holmesdale, Pa., and Lois of 89 Gaston St., Sommerville, N. J.

FINANCIAL RESOURCES:

STOCKS, BONDS, BANK ACCOUNT, INSURANCE:

None.

SUMMARY OF SOCIAL PLAN:

This client seems to be extremely honest even though there are a great deal of discrepancies in this case. This individual stated that she would like to be married in the future and she needs more money and support from this Agency.

Form PA-2D (Rev. 11/66) (SU)

NAME Marion Buckingham
ADDRESS 92 Van Wagenen Avenue
Jersey City, N. J.

REGISTRATION NO. HC-6435
COMPANION CASE

SUMMARY REPORT

DATE

3/6/67

Caseworker said he would look into the record about giving the client more support but that her case record has a great many discrepancies.

alan Lipnicki
Alan Lipnicki, caseworker

Out: 3/6/67
Dict: 3/31/67 - 2nd dictation.
Dict: 3/7/67 - 1st dictation.
Prf. & In: 5-1-67
To Sup:
Rev. by Sup:

R: 4/27/67 T: 4/27/67 ga

APR 27 1967

April 13, 1967

Dear Mrs. Rich -

This is just to let you know I am getting married and no longer wish to receive welfare.

Thank You.

Marion Buckingham

Form PA-2D (Rev. 7/63) (S

NAME Marion Buckingham Van Deusen
ADDRESS 92 Van Wagenen Ave
Jersey City -

REGISTRATION NO. HC6435
COMPANION CASE

SUMMARY REPORT

DATE

4-27-67

Clients check had been held for 5-1-67 due numerous complaints & non payment of rent & fact that caseworker was unable to make personal contact with client - Letters returned "moved" -

Letter from client received this date - Client married - no return address - postmarked Flushing - N.Y.

Ackiel Berger

CASE NUMBER HC 6435

BUDGETARY STATEMENT

J-3

Form PA-3A (Rev. 3-65) (SU)

COUNTY Hudson

Marion Buckingham (Denson)
NAME OF PAYEE — APPLICANT
289 Central Ave.
NAME OF CO — APPLICANT (Where Applicable)
Jersey City

FAMILY SIZE 1-4 5
F. B. U. 1-/
ADULT 1
CHILD — BIRTH - 3
CHILD 4 - 9 1
CHILD 10 - 12
CHILD 13 - 18 3

adj.

RECIPIENT COUNT

	IN GRANT	FOR FEDERAL MATCHING
ADULTS	1	1
CHILDREN	4	4

PART I — CLIENT'S BUDGET

PART 1a — REGULAR GRANT

REQUIREMENTS	ALLOWANCE	INCOME—SOURCE	AMOUNT
Pers. & Household Needs	235.50	OASDI	
or Personal Needs		Income Equivalent	
or Household Needs		H+H W	15.50
Shelter	80.00	court order	65.00
Board & Room			
Institutional Living			
Spec. Circum. Item	85.00		
4 BEDS			
ESTIMATE (SEE			
ATTACHED)			
		Total Income	80.50
Total Needs	400.50	I. Caramote	5-17-66
Less Income	80.50	Case Worker's Signature	Date
Budget Deficit	320.00	Wm. Richardson	5-17-66
Monthly Grant	320.00	Supervisor's Signature	Date

PART 1b — INITIAL GRANT

REQUIREMENTS	ALLOWANCE
1. Personal & Household Needs	
2. Recurring Spec. Circum. Item	
3. Sub-Total (Sum of Items 1. & 2.)	
4. Per Diem Cost (Items 3÷30 days)	
5. Item 4. x No. of Days ( )	
6. Non-Recurring Spec. Circum. Item	
7. Shelter Owing for Current Month	
8. Total Needs (Sum of Items 5., 6. & 7.)	
9. Income Available for Balance of Month	
10. Budget Deficit (Item 8. less Item 9.)	
11. Initial Grant	

PART II— INDENTIFICATION AND REQUIREMENTS OF INDIVIDUALS IN FAMILY BUDGET UNIT

NAME (Last Name First)	SEX & AGE	PERS. & HSHLD. NEEDS	SPECIAL CIRCUM. ITEM	CHECK (✓) FEDERAL MATCHING
1. Denson, Marion	F36	46.80		✓
2. Brink, Lois	F17	50.70		✓
3. " Darlene	F16	50.70		✓
4. " Cynthia	F13	50.70		✓
5. " Diane	F9	36.60		✓
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
TOTAL		235.50		

PART III RECOMMENDATION AND DECISION

RECOMMENDATION: Increase grant from $235 (1-4) to $320 (1-4) eff 6-1-66 one month, only
Decrease grant from $320 (1-4) to $235 (1-4) eff 7-1-66

Plus vendor payments for any special circumstance health requirements which are authorized to be so paid in accordance with established policy.

( ) By Administrative Action

Date ________ Date Grant Effective ________

Signature ________

( ) Ratification By County Welfare Board

Date ________ Date Grant Effective ________

Signature ________

( ) By County Welfare Board Action

Date ________ Date Grant Effective ________

Signature ________

New Jersey Department of Institutions & Agencies, Division of Public Welfare, Bureau of Assistance

~~Commissioner Joseph H.~~ July 19, 1967

ADC

44 NJSA 10:3(d)

Purposes of act

(d) "To provide safeguards wh/ restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the program;"

malice

as "mere intent, w/ knowledge of his interests, to do an akt wh/ will have the effect of interfering w/ thei"

R v C - 98 NH 68 94 A2d 376 (1953)
R v D 89 Ohio App. 222 100 NE 2d 533 (195)
M v RPC 56 Ariz 291 107 P2d 224 (1940)
M v WCT 64 App DC 218 76 F2d 988 (1935)
L v DP 158 Ga. 390, 124 SE 13 (1924)
L v SC+S (1920) 227 NY 418, 125 NE 817

" in a civilized community ..., the notion is intolerable that a man should be protected by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his effort to acquire it;" –(Jersey City Printing Co v Cassidy, 1902, 63 N.J. Eq. 759, 53 A 230) – broad but not quote

Quote fr/ Brennan v United Hatters of North Am – 1906 – 73 N.J.L. 729, 65 A 165

prospect of employment
H v G (1909) 75 NH 345, 74 A 595
B v SPUSC (1925) 161 Minn 522, 201 NW 326
W v S (1909) 109 Md. 341, 71 A 962
H v L+NRCo (1903) 105 Ky 162, 48 SW 429
and Longo v Reilly (1955) 35 NJ Super 405, 114 A2d 302

Prosser, p 976 It is to be noted, however, that all of these cases in which recovery has been permitted, whether in a tort action or in a constructive trust, have involved conduct tortious in itself, such as fraud duress or defamation. So far as now appears, there still can be no recovery merely on the basis of intentional interference, without such otherwise tortious conduct."

Need malice not negligence – Richards v Sun Oil Co. (1945) 23 NJ Misc 89, 41 A2d 267

P-p 978 privileged if to protect public interest

NJ rule of immunity of beneficiaries abolished Collopy v Newark Eye + Ear Infirmary (1958) 27 NJ 29, 141 A2d 276 restored by legis - see Mayer v Fair Lawn Jewish Center (1962) 38 NJ 549, 186 A2d 274

but see Tyrell v Burke (1933) 110 NJL 225, 164 A 586 and Lincoln Bus Co v Jersey Mut Cas Ins Co (1932) 162 A 915 10 NJ Misc 1114.

46th St.

2053

BIRTH REGISTRATION CERTIFICATE

HUDSON COUNTY BUREAU of VITAL STATISTICS

595 NEWARK AVENUE, ROOM 203
JERSEY CITY, NEW JERSEY

V. S. FILE No. 310201

Nº 3907

NAME	SEX	PLACE OF BIRTH	DATE OF BIRTH
Septima Jennifer Buckingham	Female	Jersey City, NJ	July 27,1966

Child of Marion Buckingham & Jesse Densen Buckingham

This is a true certification of name and birth facts as recorded in this office.

Aug. 3,1966
REGISTRATION DATE

May 26,1967
DATE ISSUED

CERTIFYING CLERK'S SIGNATURE

Maurice Summer
MAURICE SUMMER
REGISTRAR OF VITAL STATISTICS

STATE OF NEW JERSEY

B. H. 448 19 PROGRESS PRINTING CO.

Form W-635* (face)
Rev. 10/29/59

THE CITY OF NEW YORK - DEPARTMENT OF WELFARE
Ciudad de Nueva York - Departamento de Bienestar Público

HALF-MONTHLY BUDGET PLAN
Plan de Presupuesto Quincenal

CASE NAME (Nombre del Caso) Clesmont, Raymond CASE NO. (Caso Num.) 25 08457

ADDRESS (Dirección) 97-64 Corona Ave

ESTIMATED NEEDS (Estimado de Gastos)			
1. FOOD	Alimentos	70	00
2. PERSONAL CARE	Aseo Personal	5	70
3. CLOTHING	Ropa	28	70
4. EXPENSES INCIDENT TO AGE OR HANDICAP	Gastos Incidentales por Edad o Impedimento		
5. SCHOOL EXPENSES	Gastos Escolares	2	75
6. COD LIVER OIL	Aceite de Bacalao	8	
7. SHELTER	Alojamiento	65	00
8. HOUSEHOLD SUPPLIES	Efectos para el Hogar	3	00
9. ELECTRICITY	Electricidad	2	75
10. ICE	Hielo		
11. FUEL FOR COOKING	Combustible para Cocinar	2	15
12. FUEL FOR HEATING	Calefacción		
13. FUEL FOR HEATING WATER	Combustible para Calentar Agua		
14. LAUNDRY	Lavado de Ropa	5	90
15. TRANSPORTATION	Transportación		
16. EXPENSES FOR EMPLOYMENT OR REHABILITATION	Gastos por Empleo o Rehabilitación	22	25
17. THERAPEUTIC DIET(S)	Dieta Médica		
18. OTHER (specify)	Otros		
19. 10 working Allow		10	00
20.			
21.			
22.			
23.			
24. TOTAL NEEDS	Total de Gastos	218	25

INCOME (Ingresos)			
25. EMPLOYMENT OF: Empleo de	Mr C	108	33
26. EMPLOYMENT OF: Empleo de			
27. OTHER (specify)	Otros		
28.			
29.			
30.			
31. TOTAL INCOME	Total de Ingresos	108	33

GRANT (Asignación)		
TOTAL ESTIMATED NEEDS Total Estimado de Gastos	218	25
TOTAL INCOME Total de Ingresos	108	33
TOTAL HALF-MONTHLY GRANT Total de Asignación Quincenal	109	95

AMOUNT DUE FROM OTHERS IN HOUSEHOLD FOR SHARED ITEMS
Cantidades Correspondientes a Otros en Hogar por Cosas que Utilizan

ITEM Cosa	YOUR SHARE Su Parte	AMOUNT FROM (Cantidad de) Name	 Name	 Name	TOTAL AMOUNT FOR ITEM Cantidad Total para Cosa
1. Food					
7. Shelter					
Household 8. Supplies					
9. Electric.					
Fuel for ~~11.~~ Cooking					
14. Laundry					
TOTALS Totales					

Should be $20.00

Signature of Unit Supervisor R. E. Kitch Date 4/5 Caseload Number 015

SEE DETAILS ON OTHER SIDE
Vea Detalles al Otro Lado

Form W-635* (reverse)
Rev. 10/29/59

DETAILS OF SPECIFIED ITEMS OF BUDGET
Detalles de Ciertas Partidas en Presupuesto

MEMBERS OF HOUSEHOLD Miembros de la Familia	FOOD Alimentos	PERSONAL CARE Aseo Personal	CLOTHING Ropa	EXPENSES--AGE OR HANDICAP Gastos - Edad o Impedimento	SCHOOL EXPENSES Gastos Escolares	COD LIVER OIL Aceite de Bacalao	TRANSPORTATION Transportación	THERAPEUTI DIET Dieta Médica
Raymond	12.80	1.40	3.90		~~.75~~			
Raphael	14.30	1.30	5.60		.75			
Jamilee	10.90	.75	4.80		.50			
Theodora	10.90	.75	4.80		.50			
Philippe	10.90	.75	4.80		.50			
Patrick Noel	10.90	.75	4.80		.50			
TOTAL	70.00	5.70	28.70		2.75			

EXPENSES FOR EMPLOYMENT OR REHABILITATION
Gastos por Empleo o Rehabilitación

	NAME Nombre	Raymond	
Lunches	Almuerzos	11.40	
Carfare	Transportación	4.33	
Union Dues	Cuotas de Unión		
Withholding Tax	Impuestos Retenidos		
Social Security	Seguro Social	6.50	
Disability Tax	Impuestos de Impedimento		
Pensions	Pensiones		
Medical Plan	Plan Médico		
Other (specify):	*Otros (especifique):*		
	TOTALS Totales	22.23	

REMARKS (Observaciones)

P.V. = 16.95
Employ = 24.00
40.95

W-25 Rev. 1~~/10/51) 1~~500M-725046(66) 114

HISTORY SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

CASE NAME	ADDRESS	BASIC CASE NUMBER
Clermont, Raymond	97-64 Corona	
		PAGE NO.

Immigration Dept.

On marginal date worker went to the Immigration Dept. at 20 West Broadway and read Mr. C's record. Alien registeration number 13866043, admitted 6/13/64, type 01, Haiti. In the record it stated Mr. C father's is Henry Clermont, mother, Angela Celeslemo. It stated that the"person whom I was coming" Maria Teresa Paul, Park Place, Brooklyn. The various address that they have for Mr. C were ~~xxx~~ as of 6/13/64 181-08 145 Avenue Springfield Garden, 6/16 624 St. John's Place, Brooklyn, 8/64 129 W. 80 Street. It also stated that his occupation in Haiti was agent de manufacturers, PO Box 203, 5 Rue Estime, Port au Prince, Haiti. It also stated in the record that Mr. Raymond Clermont is of good character. This was signed by Chief of Police in Port au Prince, Haiti.

References in the US are:

Mrs. Marie Paul - cousin, 624 St. John's Place, Brooklyn
Mrs. Teres - no address
Henry Serges - no address
Marie Serges - no address

Mr. C's resources in Haiti were $250 cash, one house $6,000 one plot $700 and one car $600. The organizations Mr. C said that he was a member are: Rosierucia Order (Amarc) Rosecrucian Park, San Jose, California 1947through 1960 Franc Macon De La Gande Loge, Port au Prince, Haiti 1952 to 1964. It gave Mr. C's immigration visa number 1161 4/3/64 019-53. In no place in the record was it stated that Mr. C is a political refugee.

Call from Mr. C

5/2/67 Call received from Mr. C stating that he lost his job on 4/30/67 and received one week's pay from that date. He stated he isn't using Mrs. B any more. We explained to him that we would still have to speak to her. He said that he would ask herwhen an appointment could be set up. Worker also informed Mr. C that he should apply for UIB.

Call from Mr. C

5/4/67 Mr. C called stated Mrs. B would call us on 5/8/67. Worker informed him to come in on Friday for emergency cash since he is not working any more.

Call to Dr. Lester

5/8/67 Call was made to Dr. Lester in which we verified that Mr. C was laid off on 4/30/67 and that he received one week's pay on that day.

Call from Mr. C

5/8/67 Mr. C said that he couldn't come in due to a cold. He advised worker to send the supplementation.

Call from Mrs. B

5/8/67 Mrs. B called worker and stated that she is still working for Mr. C and is living in the household.

W-25 (Rev. 1/10/51)-1500M-725046(66) 114

HISTORY SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

CASE NAME	ADDRESS	BASIC CASE NUMBER
		PAGE NO.

Supplementation

5/8/67 Supplementating Mr. C

W661 Code 3 - 64.35 5/8 - 5/15 food, rent and other
W661 Code 3 - 113.15 5/16 - 5/31 food, rent and other
W636 sent to client

Home visit

5/9/67 On marginal date worker visited the home of Mr. C; present at the time of interview was Mr. C, Mrs. B and her son. Worker asked them what the sleeping arrangements are and Mrs. B showed worker that in the first bedroom there is a crib where her baby sleeps, a bed where she and her daughter sleep and a double bed where Mr. C's two daughter sleep. In the second bedroom there are two single beds where Mr. C's two boys sleep. In the third bedroom there is a bed where Mr. C sleeps.

Mrs. B stated that the single bed Mr. C already had in the apartment and the rest of the furniture she got from her mother. She said that she has no furniture of her own since she was living in a furnished apartment in New Jersey. Mrs. B said she moved in two weeks ago due to the inconvenience of travelling back and forth, she said that she was afraid at night and she used to take the children back and forth. Mrs. B stated she wants $40 plus room and board. She wants to be paid from 4/17 continuously. Even through the period that Mr. C was not working. She claims that a man cannot do the household chores and since she has been doing them, she feels she should get paid for this.
Mrs. B stated she works in Brooklyn four hours a night in a factory and she plans to quit as soon as she starts getting paid from the Dept. of Welfare. Mrs. B refused to tell worker where her place of employment is. Mrs. B stated that her functions in the household are washing, cooking, shopping, ironing, cleaning, feeding the children and also picking up the children up from school and helping them with their homework. Mrs B stated She learned of the job through Mr Nagles.

Loans

Mr. C stated that he borrowed from Roland Michel the following:

$130 for one month's rent for his current apartment 1/15/67
$10 for food 2/13/67
$14 for food 2/14/67

9/3/66

He stated he borrowed from Carville Thomas $100 for RCA
12/21/66 12/21/66
$120 for a security deposit and $35 for moving. Mr. C said that he made the last two loans on 12/21/66 because he was looking for an apartment at that time and if he would have found them he would have used the money then for a new apartment.

Mr. C gave the telephone numbers of Mr. R and Mr. T; they are 663-8123 for Mr. R and RI 9-3800 for Mr. T.

W-25 (Rev. 1/10/51)–1500M-725046(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

HISTORY SHEET

CASE NAME	ADDRESS	BASIC CASE NUMBER
CLERMONT, R.	97-64 Corona Ave.	ADC 2508457
		PAGE NO.

5/11/67 On marginal date Mr. Nagler and Mr. Clermont were in Intake. Our worker, Mrs. Volpe, whose dictation appears herein discussed the supplementation that we were issuing Mr. Clermont to clear up all that was owed him for full supplementation during the period his case was closed and during the period thereafter when the case was under investigation in regard to his eligibility and only food had been issued. As Supervisor, I arrived in the Intake section as Mrs. Volpe was finishing discussing these factors, explaining what we were issuing and what periods it covered. I asked if Mrs. Volpe had explained the supplementation to them. They said she had. I asked if there were any questions raised by this that I could answer. Mr. Nagler replied not. He stated that if werwere issuing all that his client had been entitlted to, the Fair Hearing would probably be withdrawn, as his needs would be satisfied in regards to that complaint.

We then asked about Mrs. Buckingham plans. We wanted to know whether or not she planned to go back to New Jersey or to remain in New York or exactly what. Mr. Nagler and Mr. Clermont said they were not certain, but that at this point she had no money. They further indicated that the plan for Miss Buchingham to remain as Housekeeper when Mr. C went to school. We explained that from the Agency's standpoint this did not seem to be the best answer. We pointed out that Miss Buckingham has her own children in the household which creates overcrowding and would then indicate rehousing. We also pointed out the possibility of an emergency arising where her own children would be her primary concern rathen than Mr. Clermont's. We also stated the possibility of friction arising with so many children in the house. We explained that as our concern and responsibility is always first the children, it might be a better plan for us to provide a trained and experience housekeeper rather than a friend who might not be as capable as one who is specifically trained in these duties.

After some discussion on these points, Mr. Nagler and Mr. Clermont agreed that if we would provide a Homemaker it would be all right with them. They pointed out that at the present time, however, Miss Buckingham had no money. We advised Miss Buckingham was free to do anything she wished. We stated she could apply for Public Assistance as may anyone else, but that Mr. Clermont was not to support her out of his check. Mr. Nagler questioned us as to whether we would supplement Mr. Clermont for the $40 he had paid Miss Buckingham for her first week of employment by him. We advised Mr. Clermont and Mr. Nagler that these services had been served without any discussion with us as to the need or plan for said Homemaker, but that we would discuss the matter further and advise them of our decision. Mr. Nagler andMr. Clermont seemed satisfied and we terminated the interview.

R. Ketler, Supv I
R. E. Keith

W-25 (Rev. 1/10/51)-1500M-725046(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

HISTORY SHEET

CASE NAME	ADDRESS	BASIC CASE NUMBER
Clermont, Raymond		PAGE NO.

5/11/67 Issuing Mr. C $130 for rent, $130 for security $35 for moving. Mr. C is to use this to pay $130 to Mr. Michele and $130 and $35 to Mr. Thompson.

W661, code 41, $130 security
" 22, $ 35 moving
" 43, $130 1/11 - 2/10 approved rent
W636 sent, copy in case record.

CALL FROM MRS. V

Mrs. V called and stated she had mistakenly lied to worker on 4/9/67 interview and that she is not working at night. She quit a few days after she started working for Mr. C. She found it impossible to keep both jobs. Mr. C has been feeding her ~~xx~~ out of his budget.

CALL TO L/L

Worker spoke to Mrs. Tracy, DE 5-6029. She stated that the rent was always at $130 a month, but the reason for the confusion was due to Mr. C stating that the DW was only willing to pay only $120 so he told the L/L to say it was $120. Mrs. Tracy also stated she does not like the idea of Mrs. V living in the household and if she doesn't move out, she is going to raise the rent.

SUPPLEMENTATION

Supplementing Mr. C from 2/1 - 2/28. He received $66 and should have received $230.80. He used $30 from bank account to maintain himself. We are subtracting this from the total.

W661, code 4, $200.80 2/1 - 2/28 food and other

SERVICE

Mr. C in service with Mr. Nagler. Worker discussed with them the budget and Mrs. Buckingham. We explained to Mr. Nagler the current supplementation and a past supplementation for $28. Mr. N seemed to be confused of this because he didn't know what it was for. Worker explained to him that Mr. C was incorrectly budgeted and this supplementation was to make up the difference. Mr. Nagler also questioned the current supplementation; he said it was too little. Worker pointed ~~xx~~ out to him that he was still going under the budget that Patrick was included, and since he has left the home, we have taken him off. Mr. Nagler agreed with the worker and said that he understood the budget. Mr. C has no money for food. Worker shecked with control and check wouldn't be delivered until the 16.

W661, code 3, $ 25 5/11 - 5/15 food

A. Volpe

5/16/67 W662 is back, changing budget to reflect Mr. C not working. Taking Patrick off the budget statistically and processing P67 - 23.

W662 effective 6/1 new pay $173.05.
W637 sent.

A. Volpe

State of New York
Department of Social Welfare (Rev. May, 1952)

MEMORANDUM ON FAIR HEARINGS IN AB, AD, ADC, AND OAA

When an applicant for or recipient of Assistance to the Blind, Aid to the Disabled, Aid to Dependent Children or Old Age Assistance requests a fair hearing in connection with an appeal, the Commissioner of Social Welfare designates a referee who holds the fair hearing at a time and place convenient for the person requesting the fair hearing and for the local public welfare department. The person requesting the hearing (referred to below as the appellant) is notified by registered mail at least five days in advance of the hearing.

1. A fair hearing is an informal process which gives the appellant an opportunity to present the reasons why he thinks his case has not been properly handled. It also enables the local public welfare department to present the reasons for its decision in his case.

2. The appellant may be represented by legal counsel if he wishes but this is not at all necessary. He may bring with him a friend or relative to assist him. If there are persons the appellant needs as witnesses at the hearing and if he wishes the assistance of the referee in securing their attendance, he should notify the referee in advance. The local agency may be represented by counsel and may bring to the hearing those staff members whose testimony is deemed essential. The hearing is not open to the public. Only persons representing the appellant, the local department of public welfare and the State Department of Social Welfare will be present.

3. The hearing will relate to the financial and social situation of the appellant at the time of the decision which is being appealed. It may also relate to the current situation. Either appellant or agency may request the assistance of the area office of the State Department in selecting and preparing material for the hearing. If the appellant has any documents which will serve to verify the statements he plans to make at the hearing, he should bring these with him.

4. All information presented at the hearing will be kept confidential. A stenographer will take minutes of the hearing and, if the appellant needs a copy of the minutes, he may request it of the referee.

5. The appellant and his witnesses, if any, will be asked questions by the referee or by another person present. Also, the appellant will be allowed to ask questions of any other person present. If there are any papers read at the hearing or given to the person holding the hearing, the appellant will be allowed to read them himself or have someone read them to him.

6. Within 30 days after the hearing is held (or within 30 days after the minutes are available), the Commissioner of Social Welfare will render a decision which is binding upon the appellant and upon the local public welfare agency.

NOTE: If the appellant should change his mind about a fair hearing, he should notify the area office at once. If he does not do so, he will be expected to come to the hearing. If he is sick or if for some other reason cannot come on the day when the hearing is to be held, he should let the area office know so that the hearing can be put off until some later date.

9522

Former Student
(Due to DV7.) Returning

RS 4-66

RCA INSTITUTES, INC.

Schools of Television and Electronics Technology
A SERVICE OF RADIO CORPORATION OF AMERICA
350 West Fourth Street, New York, N. Y. 10014

STUDENT COPY

CLERMONT, Raymond
Name of Student (Print)

79 590
Account No.

ENROLLMENT AGREEMENT

I hereby enroll in the program indicated below. My matriculation fee of $20 is enclosed.

This Agreement, together with the terms and conditions printed in RCA Institutes Catalog No. RS-6512, a copy of which has been made available to and examined by me and which is incorporated by reference herein as if set forth in full, constitutes the complete Agreement between the undersigned and RCA Institutes. RCA Institutes shall not be bound by any condition or representation not contained herein or hereafter set forth in writing and signed by a duly authorized official of RCA Institutes.

I understand that I am not obligated to complete the program, nor to pay for the program in full if I do not complete it. I promise to make the applicable tuition payments specified by the weekly or tri-weekly payment schedule below until such time as the total of those payments equals the total cost (tuition plus matriculation fee) specified for the program, or until I discontinue the program. If I discontinue before completing the program for which I have enrolled, I understand that I will receive as a refund any amount I have paid in excess of the sum of twenty dollars and the tuition payments required by the weekly or tri-weekly payment schedule below. In no event, however, shall such sum exceed the sum of: (1) twenty-five percent of the total cost (tuition plus matriculation fee) of the program, plus (2) the hourly tuition rate multiplied by the number of hours I have attended, plus (3) the hourly tuition rate multiplied by the number of hours I have been absent from regularly scheduled classes prior to my final date of attendance, but not to exceed 20% of the total length of the program.

I understand that no refund will be made on the purchase of books, tools or supplies and that a transcript will not be issued to me until all my fees and charges have been paid.

I further understand that RCA Institutes maintains, without additional charge, a placement service and customarily arranges interviews for students during their last term by such industrial companies that visit the Institutes, but that the Institutes is not obligated to obtain a position for me.

PLEASE CHECK DESIRED PROGRAM AND INSERT DAY, EVENING OR SATURDAY ENTRANCE DATE

PROGRAM		*Books, Tools and Supplies	Total Hours	Hourly Rate	Tuition	Total Cost	DAY Weekly Payment Schedule 12 per Term	DAY Entrance Date	EVENING Tri-Weekly Payment Schedule 4 per Term	EVENING Entrance Date	SATURDAY Tri-Weekly Payment Schedule 4 per Term	SATURDAY Entrance Date
☐ ELECTRONIC TECHNOLOGY	T-3	$280	2565	$1.03	$2642	$2662	$26.00		$26.00			
☒ ELECTRONICS CIRCUITS & SYSTEMS	V-7	$180	1710	$1.03	$1761	$1781	$26.00	5/23/67	$26.00		IV	
☐ ELECTRONICS CIRCUITS	V-3	$ 95	855	$1.03	$ 881	$ 901	$26.00		$26.00			
☐ AUTOMATION ELECTRONICS	V-14	$ 26	285	$1.03	$ 294	$ 314			$26.00		$26.00	
☐ DIGITAL COMPUTERS ELECTRONICS	V-15	$ 12	190	$1.03	$ 196	$ 216			$26.00		$26.00	
☐ RADIO TELEVISION RECEIVERS	V-16	$ 24	285	$1.03	$ 294	$ 314			$26.00		$26.00	
☐ PREPARATORY PROGRAM	P-1	$ 56	570	$1.03	$ 587	$ 607	$26.00					
☐ PREPARATORY MATHEMATICS & PHYSICS	P-OA	$ 10	95	$1.03	$ 98	$ 118			$26.00			
☐ COLOR TELEVISION COURSE		$ 9	95	$1.03	$ 98	$ 118			$26.00			
☐ TRANSISTOR COURSE		$ 7	57	$1.40	$ 80	$ 100			$26.00			
☐ FUNDAMENTALS OF COMPUTER PROGRAMMING	CP-1	$ 15	95	$1.40	$ 133	$ 153			$34.50		$34.50	
☐ RCA 301 COMPUTER PROGRAMMING	CP-2	$ 15	95	$1.40	$ 133	$ 153			$34.50		$34.50	
☐ IBM 1401 COMPUTER PROGRAMMING	CP-3	$ 15	95	$1.40	$ 133	$ 153			$34.50		$34.50	
☐ RCA 501 COMPUTER PROGRAMMING	CP-4	$ 15	95	$1.40	$ 133	$ 153			$34.50		$34.50	
☐ SCIENTIFIC PROGRAMMING FORTRAN	CP-5	$ 7	57	$1.40	$ 80	$ 100			$34.50		$34.50	
☐ NUMERICAL ANALYSIS	CP-6	$ 11	95	$1.40	$ 133	$ 153			$34.50		$34.50	
☐ INTENSIVE ENGLISH	EL-1	$ 20	285	$1.36	$ 388	$ 408	$34.00		$34.00			
☐												

***Approximate amounts, subject to change without notice. Books, tools and supplies may be purchased at RCA Institutes Book Store.**

Accepted:

RCA Institutes, Inc.

by M. Marsden
(Signature of School Official)

Raymond Silvain Clermont
(Signature of Applicant)

Dated 4/17 19 67

Copy Received

Raymond Silvain Clermont
(Signature of Applicant)

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

NOTICE OF SPECIAL GRANT

Mr Raymond Clermont
97-64 Corona Ave
Corona 20, N.Y.

25-0845-3
Case Number

Fold

Fold

A check for $ 28.25, covering your request for the item (s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

You were underbudgeted for 4/1 - 5/15. We are supplementing you for this period.

R. E. [illegible]	4/25	015
Unit Supervisor	Date	Caseload No.

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

Never Received

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
W.C.
Address

NOTICE OF SPECIAL GRANT

Mr Raymond Dermont
97-64 Corona Ave
Queens 20, N.Y.

25-0845-M
Case Number

Fold

Fold

A check for $ 71.15, covering your request for the item(s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

Raphael		Yamilee		Theodora	
1 shirt	90	1 shirt	.60	1 shirt	60
1 shorts	85	1 panties	60	1 panties	60
1 socks	60	1 socks	40	1 socks	40
1 shoes	800	1 shoes	7.00	1 shoes	7.00
2 p.j.	6.00	2 p.j.	2.00	2 p.j.	2.00
	1635		10.60		10.60
	80 tax		55 tax		55 tax
	171.5		11.15		11.15

(over)

R. E. Vil 4/3 015
Unit Supervisor Date Caseload No.

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

£1

Philippe	
1 shirt	.70
$ Short	.60
2 p.j.	5.30
1 Shoes	8.00
1 sock	.50
	15.10
	75 taux
	15.85

Patrick	
1 shirt	.70
1 Short	60
2 p.j.	5.30
1 Shoes	8.00
1 sock	50
	15.10
	75 taux
	15.85

Form W-637*
Rev. 11/5/59

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

NOTICE OF CHANGE IN GRANT

Mr Raymond Clermont
97-64 Corona Ave
Corona 20, N.Y

Fold

25'08457
Case Number

Fold

On and after 4/16/67 you will receive $ 109.95 as a half-monthly grant from the Department of Welfare, provided you remain eligible for this assistance. The change in grant is due to:

This will your regular grant

If you have any questions about the grant, your Investigator will be glad to arrange an appointment to discuss the details of your budget on which the amount is based.

Unit Supervisor

3/31
Date

015
Caseload No.

AVISO DE CAMBIO DE ASIGNACION

En o después de la fecha que se anota, Ud. recibirá la cantidad que aquí se indica por concepto de asignación quincenal, mientras sea elegible para esta clase de ayuda. El cambio en la asignación es por la razón(es) que se hace constar. Si tuviere alguna consulta respecto a la asignación, su Investigador hará con agrado una cita para discutir los detalles del presupuesto en que se basa ésta.

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
W.C.
Address

NOTICE OF SPECIAL GRANT

Case Number

Fold

Fold

A check for $66.35, covering your request for the item (s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

food + other 4/1 - 4/15 44.95
Rent 4/11 - 4/15 21.40

Unit Supervisor	Date	Caseload No.
	3/31	015

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

Form W-637*
Rev. 11/5/59

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

NOTICE OF CHANGE IN GANT

Mr Raymond Clermont
97-64 Corona Ave
Queens 20, NY

250845 7
Case Number

Fold

Fold

On and after May 1st you will receive $ 91.60 as a half-monthly grant from the Department of Welfare, provided you remain eligible for this assistance.

The change in grant is due to: Removal of Patrick from your budget + increase wages to $70.00 a week.

If you have any questions about the grant, your Investigator will be glad to arrange an appointment to discuss the details of your budget on which the amount is based.

	4/20	015
Unit Supervisor	Date	Caseload No.

AVISO DE CAMBIO DE ASIGNACION

En o después de la fecha que se anota, Ud. recibirá la cantidad que aquí se indica por concepto de asignación quincenal, mientras sea elegible para esta clase de ayuda. El cambio en la asignación es por la razón(es) que se hace constar. Si tuviere alguna consulta respecto a la asignación, su Investigador hará con agrado una cita para discutir los detalles del presupuesto en que se basa ésta.

Form W-637*
Rev. 11/5/59

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

NOTICE OF CHANGE IN GRANT

Mr Raymond Clermont
97-64 Corona Ave
Queens 20, N.Y.

ADC 250-845-7
Case Number

Fold

Fold

On and after 5/16 you will receive $ 57.45 as a half-monthly grant from the Department of Welfare, provided you remain eligible for this assistance.

The change in grant is due to:
We have corrected your budget

If you have any questions about the grant, your Investigator will be glad to arrange an appointment to discuss the details of your budget on which the amount is based.

R. E. Vitale — 4/28 — 015
Unit Supervisor — Date — Caseload No.

AVISO DE CAMBIO DE ASIGNACION

En o después de la fecha que se anota, Ud. recibirá la cantidad que aquí se indica por concepto de asignación quincenal, mientras sea elegible para esta clase de ayuda. El cambio en la asignación es por la razón(es) que se hace constar. Si tuviere alguna consulta respecto a la asignación, su Investigador hará con agrado una cita para discutir los detalles del presupuesto en que se basa ésta.

Actually received $ 48.70.

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
W.C. NON - RESIDENCE
Address 119 W. 31 ST.
NEW YORK, N.Y.

NOTICE OF SPECIAL GRANT

MR. RAYMOND CLERMONT
97-64 CORONA AVE. #1
QUEENS 20, N.Y.

ADC 2508457
Case Number

Fold

A check for $____________, covering your request for the item (s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

RENT	2/11-3/31/67	$217.25
RENT	4/1-4/10/67	42.75

THESE CHECKS MAY BE PICKED UP IN OUR OFFICE. PLEASE CALL US ON 4/3/67 AFTER 1 P.M. TO SEE IF THE CHECKS ARE READY TO BE PICKED UP.

R. E. V

Unit Supervisor: R. E. V
Date: 3/28/67
Caseload No.: 01-5

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
W.C.
Address

NOTICE OF SPECIAL GRANT

Mr Raymond Clemont
97-64 Corona Ave.
Queens, N.Y.

250845-1
Case Number

Fold

A check for $ 113.85, covering your request for the item (s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

1 couch	30.00	1 mop	1.60
2 chairs	30.00	6 dishes	4.20
1 dropleaf	15.00	1 saucepan	2.00
1 iron	7.95	1 saucepan	3.20
1 ironingboard	9.00	1 frying pan	2.50
		1 table cloth	3.00
			108.45
		tax	5.40
			113.85

R. E. V

Unit Supervisor

4/3
Date

015
Caseload No.

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

Form W-636*
Rev. 11/4/59
550M-725045(66) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

NOTICE OF SPECIAL GRANT

Mr Raymond Clermont
97 64 Corona Ave
Queens, N.Y.

25 08457
Case Number

A check for $289.60, covering your request for the item(s) listed below, is being sent to you under separate cover. This special grant has been calculated on the following basis:

3 single beds	99.00	10 curtains	30.00
2 dressers	30.00	3 bedspreads	16.50
1 dinette set	27.00		275.80
5 blankets	37.50	tax	13.80
6 pillows	18.00		289.60
6 sheets	13.80		
4 bath towels	4.00		

Unit Supervisor
Date 4/3
Caseload No. 015

Check Received
Fri, 4/7/'67

AVISO DE ASIGNACION ESPECIAL

Un cheque por la cantidad arriba indicada y que cubre su petición por los artículos que aquí se anotan, se está enviando a Ud. por correo separado.

Confidential information
to Mrs Arlette & Mrs Corey – & Mrs Clermont
information ~~she~~ Mrs C could only get from Taylor.
~~(involved with custody)~~

after case left unit, cut Raymond off; still talked to
Mrs C, still pushed psychiatrist exam

harrassment – called into office often (no cover) , asked about
everything – answered all questions – given no money +
told to come back. repeated again & again.
~~[illegible]~~
level of harrassment increased after each
complaint.

grounds for psychiatric exam were – 'persecution
complex' – Taylor ~~[illegible]~~ was persecuting him
~~[illegible]~~ Raymond not told about exam.

harrasment
wouldn't Δ address. wouldn't give over checks
when returned.

involvement in custody case (Mrs C told R he'd
get no money from welfare til she got kids)
grant delayed (til after case came to court?)

Return to

NEW YORK STATE EDUCATION DEPARTMENT
DIVISION OF VOCATIONAL REHABILITATION

I.F. 12/2

Form R-3a

MEDICAL REPORT

ORTHOPEDIC AND MISCELLANEOUS DISABILITIES

Name of patient CLERMONT, Raymond

Address 97-64 Corona Ave. ~~107~~ W. ~~80 St.~~, Jackson ~~Hts~~. Hight 68 - N.Y.

Hospital No.

Date of birth

To Physician, Hospital or Clinic:

The information requested concerning this patient is to be used to help us determine his (her) eligibility for rehabilitation services, to determine work limitations and to determine whether any medical or surgical treatment will increase the range of employability. All information will be held strictly confidential.

Patient reports the following disability(ies):

BACK CONDITION

Date 12/20/66 *Signature of* ~~Rehabilitation Counselor~~ Interviewer Albert J. Gonzalez

HISTORY AND PRESENT COMPLAINTS:

Post traumatic arthritis of the lumbo sacral region related to [illegible] accident Nov 22 1965

DATE OF MOST RECENT EXAMINATION: Jan 9 1967

EXAMINATION FINDINGS:

Limitation of flexion of the dorso lumbar spine. Pt must wear and orthopedic support.

Tr1825-O65-25,000 (481-560)

(OVER)

DIAGNOSIS

PROGNOSIS as to improvement in physical condition:

With treatment RESERVED (Pt must change type of work)

Without treatment CHRONICITY

PHYSICAL LIMITATIONS RESULTING FROM DISABILITY:

Rehabilitation with sitting type of work

No excessive standing.

RECOMMENDATIONS:

TREATMENT: ① CORRECTIVE EXERCISES.

② Monthly or every 3 months check up.

③ Wearing of support as prescribed.

WORKING CONDITIONS AND ACTIVITIES TO BE AVOIDED: No pushing lifting and pulling E.G. MOPPING - lifting garbage cans etc.

PROSTHESIS: Is a prosthesis indicated? YES Is patient now using a satisfactory prosthesis? YES

If so, describe: DORSO LUMBAR SUPPORT

If not, please specify type required:

USE OF PUBLIC TRANSPORTATION: Can and does patient use public transportation? YES

If not, explain:

Physician's address PAUL C. CHENET, M.D.
15 East 76th Street
New York 21, N.Y.

Date Jan 9 1967

Paul C.

Signature of physician

(Attach additional sheets if necessary to furnish complete information.)

R. Clermont.

Name of Employer. — Appartment Hotel
Type of work - Switch Board & Clerk
Salary — 50.00 weekly.

Starts
approximately
on 3/20/89.

Appartments Hotel.
415 B'way
Vice Pres - E. Testa.

Mr Wright

Employ - Switchboard

Apt. Hotel, 415 B'way.
EV 8-4742
$50.00 weekly

92 vonWegman St.

97-64 Corona Ave.

Marion

~~Who~~:

Mrs Aponte will care for them in Corona.

1. Landlord - ✓
2. Employer - ✓.
3. Woman in N.J. cared for Children & a School in N.J.

~~#?~~ (b) Affidavits on debts -

(c) R.C.A. Institute - cost & length of course. How much longer to complete?

~~(d)~~. Avg salary of grads. when course finished guarantee employment?

(e) Rent receipts & security.

Padlocked -.

Cousin of RC - Mrs Anna Arlet
Hostile. - 155 W. 81st St.
Apt. 1D

Purpose

Loans by R. Clermont - outstanding

Purpose				
RCA Institute	Sept. 3 - 1966 -	$100.00	Camille Thomas
Security on House	Dec. 21 - 1966 -	$120 + 35.00	〃 〃
Living	Feb. 14 - 67 -	$ 10 + 14	Roland Michel
〃	Feb. 14 - 〃 -	$ 101 -	Mrs. Wilson
Rent.	Feb. 10 〃	$ 120 -	Roland Michel

Camille Thomas - 5.00 Weekly
Roland Michel - 5.00 Weekly
from febuary 11 tou date

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

Index No. L & T 19

Mrs. Marie Tracy
3821 111th Street
Corona, N.Y.
Petitioner, (Landlord)

against

Mr. Raymond Clermont
9764 Corona Ave.
Jackson Heights, N.Y.
Respondent (Tenant)
Address

~~Respondent (Undertenant)~~
~~Address~~

First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described

NOTICE OF PETITION
Non-Payment Dwelling

Petitioner's Residence:

Business Address:

To the respondent[s] above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed petition of Mrs. Marie Tracy . verified the 14th day of March 1967 prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows: ~~Apartment No.~~ on the first floor, consisting of all rooms, in premises known as and located at 9764 Corona Ave., Jackson Heights, New York
County of Queens in the City of New York, as demanded in the petition.

TAKE NOTICE also that demand is made in the petition for judgment against you for the sum of $~~390.00~~ 260.00

TAKE NOTICE also that WITHIN FIVE DAYS after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of this Court at

County of City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the **petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than 3 nor more than 8 days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE days from the date of such judgment.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event you fail to answer and appear, final judgment by default will be entered against you but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you.

Dated: City of New York, County of
the day of 19

....
Clerk of the Civil Court of the City of New York

....
~~Attorney for Petitioner~~

....
~~Address~~

....
~~Telephone No.~~

* Strike out if inapplicable.
** If the petitioner appears in person, strike out the words "undersigned attorney for the"

IMPORTANT TO TENANT—If you are dependent upon a person in the military service of the United States or the State of New York, advise the Clerk immediately, in order to protect your rights.

B 206DC— Copy Petition and Copy Notice of Petition. Dwelling, Civil Court. 6-66
Keep this as an office copy and serve duplicates.

COPYRIGHT 1966 BY JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF QUEENS

Index No. L & T..................19........

Mrs. Marie Tracy
3821 111th Street
Corona, New York
Petitioner (Landlord)

against

Mr. Raymond Clermont
9764 Corona Avenue
Jackson Heights, N.Y.
Respondent (Tenant)
Address

~~Respondent (Undertenant)~~

*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described**

PETITION
Non-Payment
Dwelling

The petition of Mrs. Marie Tracy respectfully shows that:

1. Petitioner is Mrs. Marie Tracy
~~*authorized to institute and maintain this proceeding and is the agent of the owner of the premises hereinafter described~~
the owner and landlord of the premises hereinafter described.

2. Respondent Mr. Raymond Clermont
is the tenant of said premises who entered in possession thereof ~~under~~ ~~a written agreement made on~~ ~~the~~ ~~day of~~ ~~19~~ between respondent and the landlord, wherein respondent promised to pay to landlord as rent $130.00 each month in advance on the 14th day of each month.
~~Respondent~~
~~is the undertenant of the aforesaid respondent tenant~~

3. Respondents are now in possession of said premises.

4. The premises from which removal is sought were rented for dwelling purposes and are described and designated as follows: ~~Apartment No.~~ on the first ~~x~~ floor, consisting of all rooms, in premises known as and located at 9764 Corona Ave., Jackson Heights, N.Y. which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of Queens

5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the 14th day of each of said month.

month		rent due	month		rent due
~~Jan.~~	1967	~~$130.00~~		19	$
Feb.	1967	$130.00		19	$
Mar.	1967	$130.00		19	$
	19	$		19	$

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is ~~$390.00~~ $260.00

6. That said rent has been duly demanded personally from the tenant since the same became due.

7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.
*That said premises are not subject to rent control by reason of two family dewelling

~~*That the rent demanded herein is not greater than the maximum rent established and fixed by the City Rent and Rehabilitation Administration as prescribed by the City Rent and Rehabilitation Law of The City of New York~~

That the property herein sought to be recovered (is) ~~(is not)~~ the residence of the tenant ~~and undertenants herein~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of ~~$390.00~~ ~~with interest from~~ 260.00 ~~19~~ ; the costs and disbursements of this proceeding.

Dated: City of New York, County of Queens
~~14th~~ the 14th day of March, 1967

marie Tracy .... Petitioner
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF Queens ss.: Mrs. Marie Tracy

Mrs. Marie Tracy being duly sworn deposes and says that deponent is the petitioner in the foregoing petition and has *heard* read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord. That the reason this verification is not made by the petitioner in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its................................and that the information above stated is from the books and records of the corporation.

Sworn to before me this
day of 19

marie Tracy
The name signed must be printed beneath

Mrs. Marie Tracy

Attorney(s) for Petitioner
Office and Post Office Address

*Strike out if inapplicable

I, undersigned, hereby state that upon ~~requs~~ three different requests from Mr. Raymond Clermont, I have made three loans to him, totalling $235.00 (Two hundred & Thirty five dollars), one on September 3, 1966, and two others on December 21, 1966, subject by him to pay me back ~~when~~ as soon as he will be in position to do so

New York February 20, 1967

C Thomas

Camille Thomas

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20th DAY OF February 1967
Bernard Cohen Notary

BERNARD COHEN
NOTARY PUBLIC, State of New York
No. 44-5735901
Qualified in Rockland County
Cert. filed in New York County
Term Expires March 30, 1968

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

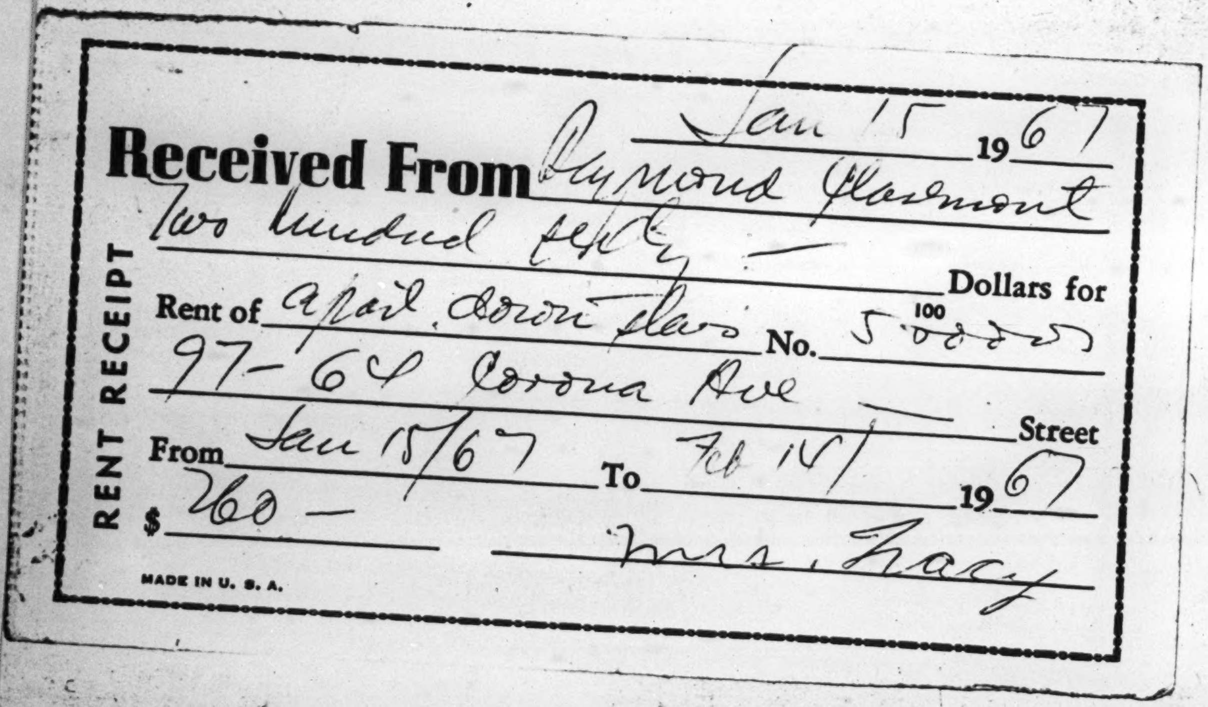
The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

457P EST MAR 15 67 SYA369
SSE421 SY KRA233 PD 3 EXTRA FAX KR NEW YORK NY 15 419P EST
RAYMOND CLERMONT
97-64 CORONA AVE APT 1 CORONA NY

PLEASE REPORT HERE 9:00-AM THURSDAY 3-16-67 IF YOU STILL NEED ASSISTANCE BE PREPARED DISCUSS FACTS RELATING ELIGIBILITY FOR CONTINUED ASSISTANCE BRING TELEGRAM

PERCIVAL NON RESIDENCE WC 119 W 31
(38).

SF1201(R2-65)



RENT RECEIPT

Jan 15 1967

Received From Raymond Clarmont

Two hundred fifty — Dollars for

Rent of apart. down flors No. 5 0000

97-64 Corona Ave — Street

From Jan 15/67 To Feb 15 1967

$ 260 —

Mrs. Tracy

MADE IN U. S. A.

Form M-3h
Rev. 10/5/59

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

W.C.
Address

Department of Welfare
Non Residence Welfare Center
119 West 31st Street
New York, N. Y. 10001

NOTICE OF DISCONTINUANCE OF PUBLIC ASSISTANCE

Mr Raymond Clermont
97-64 Corona Ave
Corona, L.I.

ADC2508457
Case Number

Fold

Fold

Our investigation shows that effective immediately you are not eligible to receive public assistance

for the following reasons:

1. Concealment of assets, (bank account)
2. Use of public assistance funds to pay off installment loan.

In the event that you must reapply for public assistance you must be prepared to by interviewed in our Legal Division

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

J.F. Taylor	2/17/67	EE2
Unit Supervisor	Date	Caseload No.

AVISO DE SUSPENSION DE AYUDA

Nuestra investigación revela que efectivo inmediatamente y por las razones que aquí se exponen que Ud. no es elegible para recibir el tipo de asistencia arriba mencionado.

El folleto que se le proporcionó cuando hizo su solicitud explica las condiciones que se requieren para conceder esta clase de ayuda y los derechos que a Ud. le asisten en lo que respecta al reexamen de esta decisión.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
P.O. BOX 138, COOPER STATION, NEW YORK, N.Y. 10003

TELEPHONE 0R9-6700

YOUR ACCOUNT NUMBER 46-1038-0816-013

FROM MO.	FROM DAY	TO MO.	TO DAY	TO YR.	METER READINGS PREVIOUS	METER READINGS PRESENT	KWHR. OR 100 CU. FT.	* AMOUNT	SERVICE RATE
1	26	2	10	67	380	388	80	3.97	EL1
1	26	2	10	67	328	330	2	.94	GS1
							ARREARS	33.47	

RAYMOND CLERMONT
97 64 CORONA AVE 1FL
CORONA N Y

FINAL

KEEP THIS PART

161 W 80 ST #2 24

ELEC. METER CONSTANT	DEMAND IN KILOWATTS	RATE ADJUSTMENT ¢ PER KWHR.	RATE ADJUSTMENT ¢ PER 100 CU. FT.	SALES TAX
10		-.0399	.2745	.24

TOTAL AMOUNT DUE 38.38

*Includes Rate Adjustment and Sales Tax where applicable.

CHECKS MAY BE MADE PAYABLE TO Con Edison

RAYMOND CLERMONT
4610380816013 3347

BILLS ARE DUE ON PRESENTATION

PAY THIS AMOUNT 38.38

PLEASE RETURN THIS STUB

CONSOLIDATED EDISON CO. OF NEW YORK, INC.
P.O. BOX 138, COOPER STATION, NEW YORK, N.Y. 10003

NOTICE OF DISCONNECTION OF SERVICE

We're sorry...but our service will be turned off and your service agreement ended unless your payment for the total amount due is received by

MO.	DAY	YEAR
2	28	67

RAYMOND CLERMONT
161 W 80 ST 02 24
NEW YORK N Y

If service is turned off, it will be at least 24 hours after payment of all charges due, plus a deposit or an additional deposit and the reinstatement of your service agreement before it can be turned on.

46 1038 0816 013
YOUR ACCOUNT NUMBER

PAY THIS AMOUNT 33 47

MAKE CHECKS PAYABLE TO
Con Edison

PLEASE RETURN THIS COUPON WITH YOUR PAYMENT.

YOUR ACCOUNT NUMBER
46 1038 0816 013

RAYMOND CLERMO

PAY THIS AMOUNT 33 47

25-146 (EA) DATA PROC. 8-65 IBM C71156-0

Statements

1. **Landlord**
   1. Rent. - Security - How much each.
   2. Amount paid - Amount due.
   3. Who makes repairs: (a) Inside
      (b) Outside
   4. Who provides heat?

2. **Employer**
   (a) Started work ~~yesterday~~ Mon., 3/20/67
   (b) Pay before & after taxes
   (c) Hours of work.
   (d) Nature of work

3. (a) Name of school in N.J.
   (b) Who cared for children
4. Affidavits from creditors:
   "I, have loaned R.C. $— on (date) and $— on (Date)."

(Notary)

5. Send Rent & secur.

A 54—Dwelling House Lease.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE, AT BROADWAY, NEW YORK

PARTIES

THIS LEASE, made the day of **January**, 19**68**, between **STANLEY ROBEANTS and OLGA ROBEANTS, of 147-28 110th Road, Jamaica, New York,**

hereinafter referred to as LANDLORD, and

RAYMOND CLAREMENT of 97-64 Corona Avenue, Queens, New York,

hereinafter jointly and severally referred to as TENANT.

PREMISES

WITNESSETH, that the Landlord hereby leases to the Tenant, and the Tenant hereby hires and takes from the Landlord, all that certain lot of land with the dwelling thereon known and described as Number

147-28 110th Road, Jamaica, New York

TERM

RENT

to be used and occupied solely as a strictly private dwelling for one family only, by the Tenant and the family of the Tenant consisting of persons, and not otherwise, for a term to commence on the **1st** day of **February** 19**68**, and to end on the **31st** day of **January**, 19**70** unless sooner terminated as hereinafter provided, at the annual rent of **TWO THOUSAND FORTY and 00/100 ($2,040.00) DOLLARS**

of $170.00

due and payable in advance in equal monthly instalments on the first day of each and every month during the term.

THE TENANT COVENANTS:

FIRST.—The Tenant will pay the specified rent and any "additional rent" at the times and in the manner herein provided, to the Landlord at **the above address or other designated in writing by the landlord**

State of New York, or at such other place as the Landlord may designate from time to time hereafter.

REPAIRS
ORDINANCES
MOVING INJURY
SURRENDER
INDEMNIFY LANDLORD

SECOND.—That, throughout said term, the Tenant will take good care of the demised premises and appurtenances, and suffer no waste or injury; make, as and when needed, all interior and exterior repairs in and about the demised premises and the fixtures and appurtenances, which repairs shall be in quality and class, equal to the original work; comply with all laws, ordinances and governmental regulations, and the regulations of the New York Board of Fire Underwriters or other similar board having jurisdiction, applicable to the demised premises; keep the sidewalk and curb free from snow and ice; throughout said term and forever afterward, indemnify and save harmless the Landlord from and against any and all liability, arising from injury during said term to person or property, occasioned wholly or in part by any act or omission of the Tenant, or of the guests, servants, assigns, under-tenants or sub-tenants of the Tenant; repair, at or before the end of the term, all injury done by the installation or removal of furniture and property so as to restore the demised premises to their original state; and, at the end of the term, to quit and surrender the demised premises in as good order and condition as they were at the beginning of the term, reasonable wear and damage by the elements excepted. If said premises be not surrendered at the end of the term, the Tenant will make good to the Landlord all of the damage which the Landlord shall suffer by reason thereof, and will indemnify the Landlord against all claims made by any succeeding tenant against the Landlord founded upon delay by the Landlord in delivering possession of the premises to said succeeding tenant, so far as such delay is occasioned by failure of the Tenant to so surrender the premises. **(See paragraph 22).**

NEGATIVE COVENANTS

THIRD.—That the Tenant will not drive nails in, drill into, disfigure or deface any part of the building or suffer the same to be done; will not do anything, or suffer anything to be done upon the demised premises which will increase the rate of fire insurance upon said building; will not permit the accumulation of waste or refuse matter, and will not without the written consent of the Landlord first obtained in each case, either sell, assign, mortgage, pledge, encumber or transfer this lease, underlet or sublet the demised premises or any part thereof, make any alteration in the demised premises, expose any sign or advertisement thereon, or use the demised premises or any part thereof or suffer the same to be used, for any purpose other than as a private dwelling apartment, nor by anybody other than the Tenant and the above designated members of the Tenant's family. It is hereby expressly understood and agreed that the character of the occupancy of the demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by the Landlord to the Tenant, and in the event of a violation by the Tenant of the restrictions against sale, assignment, mortgaging, pledging, encumbering or transferring this lease or underletting or subletting the demised premises or any part thereof, or if the Tenant shall cease to occupy the premises or shall permit the same to be occupied by parties other than as aforesaid or allow the use of the same for any purpose not herein permitted, or violate any other restriction, condition or requirement of this lease, then this lease may, at the option of the Landlord, or the agents or assigns of the Landlord, be terminated in the manner provided in the first paragraph of Section "Sixth" hereof.

WATER CHARGES, ETC.

~~FOURTH.—That, throughout said term the Tenant will pay for all water consumed on the demised premises and will pay each and every rent or charge assessed or imposed according to law against the demised premises for water consumed thereon, and will make such payments promptly as the same become due; and if the Tenant fails to make any such payment, the Landlord may make the same and the amount so paid shall be additional rent, due and payable by the Tenant to the Landlord on the first day of the month following such payment, or at the option of the Landlord, on the first day of any succeeding month. The Tenant will keep the water~~ meter on the demised premises in repair. The Tenant will pay for any and all oil, coal, electric current or gas consumed on the demised premises.

IT IS MUTUALLY COVENANTED AND AGREED THAT:

FIRE, ETC., CLAUSE

FIFTH.—If, through no fault or negligence of the Tenant, the said demised premises shall be partially damaged by fire or other casualty, repairs shall be made by the Landlord as speedily as conveniently possible; and in case the damage shall be so extensive as to render the demised premises wholly untenantable, the rent shall cease until such time as said premises shall have been put in repair; but in the event of the substantially total destruction of the demised premises by fire or otherwise, or in case the damage to the demised premises shall be so extensive that they cannot, in the opinion of the Landlord, be repaired within thirty days, or if the Landlord shall decide to remodel or reconstruct the building, then the rent shall be paid only up to the time of such destruction or damage and any rent paid for a period subsequent to that time shall be refunded by the Landlord, and all interest of the Tenant in the demised premises shall thereupon terminate, and this lease shall become void from such time, excepting that the Tenant shall be and continue liable for any such destruction or damage caused by the carelessness, negligence or improper conduct of the Tenant, his family, agents, servants, guests or visitors. In determining reasonable time for the making of repairs, allowance shall be made for all time lost in connection with the adjustment of the fire insurance loss and all time lost by reason of what are commonly known as "labor troubles."

DEFAULTS

FIVE-DAY NOTICE

SIXTH.—If the Tenant shall default in fulfilling any of the covenants or conditions of this lease, other than the covenant for the payment of rent, or if the Tenant becomes insolvent or be adjudicated a bankrupt or applies for or takes the benefit of any bankruptcy or insolvent act or any act or statutory provisions for the relief of debtors, now or hereafter enacted, or makes a general assignment for the benefit of creditors or if a Receiver or Trustee be appointed for the Tenant's property, or if this lease or the estate of the Tenant hereunder be transferred or pass to or devolve upon any other person or corporation, or if the Landlord, or the assigns of the Landlord, or the agent for the time being of the Landlord or of said assigns in respect to said demised premises, shall deem objectionable or improper any conduct on the part of the Tenant or occupants, the Landlord may give to the Tenant five days' notice of intention to end the term of this lease, and thereupon at the expiration of said five days, the term under this lease shall expire as fully and completely as if that day were the date herein definitely fixed for the expiration of the term, and the Tenant will then quit and surrender the demised premises to the Landlord, but the Tenant shall remain liable as hereinafter provided.

RIGHTS UPON DEFAULTS, RE-ENTRY

RELETTING

If the Tenant shall default in the payment of the rent reserved hereunder, or any part thereof, or if the notice last above provided for shall have been given and said five days' period shall have elapsed, or if the demised premises become vacant or deserted, the Landlord, by its agents and servants, may immediately, or at any time thereafter, re-enter the demised premises and remove all persons and property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damage therefor, and the Tenant, whether or not the premises be re-let as hereinafter provided, shall remain liable to the Landlord for damages equivalent in amount to all of the rent reserved hereunder to the time when this lease would have expired but for such termination, and the same shall be due and payable by the Tenant to the Landlord on the several rent days above specified, and also in case of any such re-entry the Tenant shall pay to the Landlord on demand, as additional damages, all legal and other expenses incurred in removing the Tenant, the commissions for re-letting the demised premises and collecting rent, the cost of redecorating, refinishing and repairing the demised premises and such other expenses as the Landlord may incur in connection therewith. Upon any such re-entry, the Landlord, at its option, may re-let the demised premises or any part or parts thereof, for the remainder of the demised term or any part or parts thereof or for a period extending beyond the date for the expiration of this lease and receive the rents therefor; and the rents collected for the balance of the agreed term of the Tenant on any such re-letting may be applied to pay any of the aforesaid items of "additional damages" remaining unpaid and to the fulfillment and performance of the other covenants of the Tenant hereunder, and the net avails thereof shall be applied by the Landlord on account of any rent unpaid by the Tenant for the remainder of the demised term; but the Tenant, however, shall pay to the Landlord upon each of such rent

A **54**—Dwelling House Lease.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE, AT BROADWAY, NEW YORK

PARTIES

THIS LEASE, made the day of **January** , 19**68** , between

STANLEY ROBEANTS and OLGA ROBEANTS, of 147-28 110th Road, Jamaica, New York,

hereinafter referred to as LANDLORD, and

RAYMOND CLAREMENT of 97-64 Corona Avenue, Queens, New York,

hereinafter jointly and severally referred to as TENANT.

PREMISES

WITNESSETH, that the Landlord hereby leases to the Tenant, and the Tenant hereby hires and takes from the Landlord, all that certain lot of land with the dwelling thereon known and described as Number

147-28 110th Road, Jamaica, New York

TERM

RENT

to be used and occupied solely as a strictly private dwelling for one family only, by the Tenant and the family of the Tenant consisting of persons, and not otherwise, for a term to commence on the **1st** day of **February** 19**68**, and to end on the **31st** day of **January** , 19**70** unless sooner terminated as hereinafter provided, at the annual rent of

TWO THOUSAND FORTY and 00/100 ($2,040.00) DOLLARS

due and payable in advance in equal monthly instalment~~s~~ **of $170.00** on the first day of each and every month during the term.

THE TENANT COVENANTS:

FIRST.—The Tenant will pay the specified rent and any "additional rent" at the times and in the manner herein provided, to the Landlord at **the above address or other designated in writing by the landlord**

State of New York, or at such other place as the Landlord may designate from time to time hereafter.

REPAIRS
ORDINANCES
MOVING INJURY
SURRENDER
INDEMNIFY LANDLORD

SECOND.—That, throughout said term, the Tenant will take good care of the demised premises and appurtenances, and suffer no waste or injury; make, as and when needed, all interior and exterior repairs in and about the demised premises and the fixtures and appurtenances, which repairs shall be in quality and class, equal to the original work; comply with all laws, ordinances and governmental regulations, and the regulations of the New York Board of Fire Underwriters or other similar board having jurisdiction, applicable to the demised premises; keep the sidewalk and curb free from snow and ice; throughout said term and forever afterward, indemnify and save harmless the Landlord from and against any and all liability, arising from injury during said term to person or property, occasioned wholly or in part by any act or omission of the Tenant, or of the guests, servants, assigns, under-tenants or sub-tenants of the Tenant; repair, at or before the end of the term, all injury done by the installation or removal of furniture and property so as to restore the demised premises to their original state; and, at the end of the term, to quit and surrender the demised premises in as good order and condition as they were at the beginning of the term, reasonable wear and damage by the elements excepted. If said premises be not surrendered at the end of the term, the Tenant will make good to the Landlord all of the damage which the Landlord shall suffer by reason thereof, and will indemnify the Landlord against all claims made by any succeeding tenant against the Landlord founded upon delay by the Landlord in delivering possession of the premises to said succeeding tenant, so far as such delay is occasioned by failure of the Tenant to so surrender the premises. **(See paragraph 22).**

NEGATIVE COVENANTS

THIRD.—That the Tenant will not drive nails in, drill into, disfigure or deface any part of the building or suffer the same to be done; will not do anything, or suffer anything to be done upon the demised premises which will increase the rate of fire insurance upon said building; will not permit the accumulation of waste or refuse matter, and will not without the written consent of the Landlord first obtained in each case, either sell, assign, mortgage, pledge, encumber or transfer this lease, underlet or sublet the demised premises or any part thereof, make any alteration in the demised premises, expose any sign or advertisement thereon, or use the demised premises or any part thereof or suffer the same to be used, for any purpose other than as a private dwelling apartment, nor by anybody other than the Tenant and the above designated members of the Tenant's family. It is hereby expressly understood and agreed that the character of the occupancy of the demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by the Landlord to the Tenant, and in the event of a violation by the Tenant of the restrictions against sale, assignment, mortgaging, pledging, encumbering or transferring this lease or underletting or subletting the demised premises or any part thereof, or if the Tenant shall cease to occupy the premises or shall permit the same to be occupied by parties other than as aforesaid or allow the use of the same for any purpose not herein permitted, or violate any other restriction, condition or requirement of this lease, then this lease may, at the option of the Landlord, or the agents or assigns of the Landlord, be terminated in the manner provided in the first paragraph of Section "Sixth" hereof.

WATER CHARGES, ETC.

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FIRE, ETC., CLAUSE

FIFTH.—If, through no fault or negligence of the Tenant, the said demised premises shall be partially damaged by fire or other casualty, repairs shall be made by the Landlord as speedily as conveniently possible; and in case the damage shall be so extensive as to render the demised premises wholly untenantable, the rent shall cease until such time as said premises shall have been put in repair; but in the event of the substantially total destruction of the demised premises by fire or otherwise, or in case the damage to the demised premises shall be so extensive that they cannot, in the opinion of the Landlord, be repaired within thirty days, or if the Landlord shall decide to remodel or reconstruct the building, then the rent shall be paid only up to the time of such destruction or damage and any rent paid for a period subsequent to that time shall be refunded by the Landlord, and all interest of the Tenant in the demised premises shall thereupon terminate, and this lease shall become void from such time, excepting that the Tenant shall be and continue liable for any such destruction or damage caused by the carelessness, negligence or improper conduct of the Tenant, his family, agents, servants, guests or visitors. In determining reasonable time for the making of repairs, allowance shall be made for all time lost in connection with the adjustment of the fire insurance loss and all time lost by reason of what are commonly known as "labor troubles."

DEFAULTS
FIVE-DAY NOTICE

SIXTH.—If the Tenant shall default in fulfilling any of the covenants or conditions of this lease, other than the covenant for the payment of rent, or if the Tenant becomes insolvent or be adjudicated a bankrupt or applies for or takes the benefit of any bankruptcy or insolvent act or any act or statutory provisions for the relief of debtors, now or hereafter enacted, or makes a general assignment for the benefit of creditors or if a Receiver or Trustee be appointed for the Tenant's property, or if this lease or the estate of the Tenant hereunder be transferred or pass to or devolve upon any other person or corporation, or if the Landlord, or the assigns of the Landlord, or the agent for the time being of the Landlord or of said assigns in respect to said demised premises, shall deem objectionable or improper any conduct on the part of the Tenant or occupants, the Landlord may give to the Tenant five days' notice of intention to end the term of this lease, and thereupon at the expiration of said five days, the term under this lease shall expire as fully and completely as if that day were the date herein definitely fixed for the expiration of the term, and the Tenant will then quit and surrender the demised premises to the Landlord, but the Tenant shall remain liable as hereinafter provided.

RIGHTS UPON DEFAULTS, RE-ENTRY

RELETTING

If the Tenant shall default in the payment of the rent reserved hereunder, or any part thereof, or if the notice last above provided for shall have been given and said five days' period shall have elapsed, or if the demised premises become vacant or deserted, the Landlord, by its agents and servants, may immediately, or at any time thereafter, re-enter the demised premises and remove all persons and property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damage therefor, and the Tenant, whether or not the premises be re-let as hereinafter provided, shall remain liable to the Landlord for damages equivalent in amount to all of the rent reserved hereunder to the time when this lease would have expired but for such termination, and the same shall be due and payable by the Tenant to the Landlord on the several rent days above specified, and also in case of any such re-entry the Tenant shall pay to the Landlord on demand, as additional damages, all legal and other expenses incurred in removing the Tenant, the commissions for re-letting the demised premises and collecting rent, the cost of redecorating, refinishing and repairing the demised premises and such other expenses as the Landlord may incur in connection therewith. Upon any such re-entry, the Landlord, at its option, may re-let the demised premises or any part or parts thereof, for the remainder of the demised term or any part or parts thereof or for a period extending beyond the date for the expiration of this lease and receive the rents therefor; and the rents collected for the balance of the agreed term of the Tenant on any such re-letting may be applied to pay any of the aforesaid items of "additional damages" remaining unpaid and to the fulfillment and performance of the other covenants of the Tenant hereunder, and the net avails thereof shall be applied by the Landlord on account of any rent unpaid by the Tenant for the remainder of the demised term; but the Tenant, however, shall pay to the Landlord upon each of such rent

WAIVER BY TENANT

days the amount of any and all deficiencies then existing. The Tenant hereby waives all rights of redemption and the Tenant waives all rights now or hereafter existing under Real Property Law, §227; and the Tenant waives all rights to trial by jury in any summary proceeding hereafter instituted by the Landlord against the Tenant in respect to the demised premises and in any action hereafter brought to recover rent or "additional rent" becoming due hereunder and in any other proceeding or action involving the terms, covenants or conditions of this lease or the demised premises, and on any defense or counterclaim interposed by Tenant in any of such proceedings or actions. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. Tenant agrees that the covenants of the Tenant in this lease contained on the part of the Tenant to be performed, shall be deemed conditional limitations as well as covenants and conditions.

REMEDIES CUMULATIVE

OTHER REMEDIES

ADDITIONAL RENT

In the event of a breach or threatened breach by the Tenant of any of the terms, covenants or conditions of this lease, the Landlord shall have the right of injunction, and the right to invoke any remedy allowed at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for. If the Tenant shall default in the performance of any covenant herein contained, the Landlord may immediately, or at any time thereafter, without notice, perform the same for the account of the Tenant. If a notice of mechanic's lien be filed against the demised premises, for, or purporting to be for, labor or material alleged to have been furnished, or to be furnished to or for the Tenant at the demised premises, and if the Tenant shall fail to take such action as shall cause such lien to be discharged within fifteen days after the filing of such notice, the Landlord may pay the amount of such lien or discharge the same by deposit or by bonding proceedings, and in the event of such deposit or bonding proceedings, the Landlord may require the lienor to prosecute an appropriate action to enforce the lienor's claim. In such case, the Landlord may pay any judgment recovered on such claim. Any amount paid or expense incurred by the Landlord, as in this section of this lease provided, and any amount other than rent as to which the Tenant shall at any time be in default for or in respect to any provision of this lease, and at any expense incurred or sum of money paid by the Landlord by reason of the failure of the Tenant to comply with any provision hereof, or in defending any such action, shall be deemed to be "additional rent" for the demised premises, and shall be due and payable by the Tenant to the Landlord on the first day of the next following month, or, at the option of the Landlord, on the first day of any succeeding month. The receipt by the Landlord of any installment of the regular stipulated rent hereunder or any of said "additional rent", shall not be a waiver of any other "additional rent" then due. For the non-payment of any "additional rent" the Landlord shall have the same rights and remedies that the Landlord has for any of the regular first above specified rent.

ALL RENT DUE

SEVENTH.—Anything herein to the contrary notwithstanding, the premises herein mentioned are demised for the whole term with the whole amount of rent herein reserved due and payable at the time of the making of this lease, and the payment of rent in installments as above provided is for the convenience of Tenant only and upon default by Tenant in the making of any installment payment of rent, then the whole of the rent reserved for the whole of the period then remaining unpaid shall, at Landlord's option, at once become due and payable without any notice or demand.

COLLECTION OF RENT FROM OTHERS

EIGHTH.—No payment by Tenant or receipt by Landlord of an amount less than the monthly rent herein stipulated, shall be deemed to be other than on account of the stipulated rent, nor shall any endorsement on any check nor any letter accompanying such payment of rent be deemed an accord and satisfaction, but Landlord may accept such payment without prejudice to Landlord's rights to collect the balance of such rent. If this lease be assigned, or if the demised premises or any part thereof be underlet, sublet or occupied by anybody other than the Tenant, the Landlord may collect rent from the assignee, undertenant, subtenant or occupant and apply the net amount collected to the rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment, underletting and subletting, or as an acceptance of the assignee, undertenant, subtenant, or occupant as tenant, and in every such case the Tenant shall perform and continue to perform all of the covenants of this lease on the part of the Tenant to be performed.

AS TO WAIVERS

KEYS

NINTH.—The failure of the Landlord to insist, in any one or more instances upon a strict performance of any of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Landlord of rent, with knowledge of the breach of any covenant or condition hereof, shall not be deemed a waiver of such breach, and no waiver by the Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord. Even though the Landlord shall consent to an assignment hereof, no further assignment shall be made without express consent in writing by the Landlord. The delivery of keys of the demised premises to any officer or employee of the Landlord or to the Landlord's agent, shall not operate as a termination of this lease or as a surrender of the demised premises.

MORTGAGE SUBORDINATION

TENTH.—This lease shall be subject and subordinate at all times to the lien of any and all mortgages or extensions or renewals thereof now or at any time hereafter placed upon the demised premises or the lands of which the demised premises are a part, and to all advances made or hereafter to be made on the security thereof, irrespective of the date of recording, and the Tenant agrees to execute and deliver on demand by Landlord such further instrument or instruments evidencing such subordination of this lease to the lien of any such mortgage or mortgages or extension or renewal thereof or advances made or to be made on the security thereof, as may be necessary or requested by Landlord, and a refusal to execute such instrument or instruments shall entitle the Landlord, at its option to cancel this lease in the manner provided in the first paragraph of section "Sixth" hereof without incurring any expense or damage and the term hereby granted is expressly limited accordingly, and the Tenant hereby appoints the Landlord the attorney-in-fact of the Tenant, irrevocable to execute and deliver any such instrument or instruments evidencing such subordination for and in the name of the Tenant. In the event of the voiding or annulment of this lease by the foreclosure of any such mortgage, the Landlord shall not be liable for any damages or loss thereby caused to or suffered by the Tenant.

IMPROVEMENTS

ELEVENTH.—All improvements made by the Tenant to or upon the demised premises shall, when made, at once be deemed to be attached to the freehold, and become the property of the Landlord, and at the end or other expiration of the term, shall be surrendered to the Landlord in as good order and condition as they were when installed, reasonable wear excepted.

NOTICES

TWELFTH.—Any notice by the Landlord to the Tenant shall be deemed to be duly given only if in writing and either delivered personally to the Tenant or left upon the demised premises, or delivered to any person in charge of the demised premises, or mailed by registered letter in any general or branch post office enclosed in a postpaid envelope addressed to the Tenant at his or its above address or at the demised premises. Any notice by the Tenant to the Landlord shall be deemed to be duly given only if in writing and either delivered personally to an officer of the Landlord or to the agent (if any) of the Landlord charged with the renting and management of the demised premises, or mailed by registered letter in any general or branch post office, enclosed in a postpaid envelope addressed to the Landlord at the address hereinbefore given.

NO LIABILITY

THIRTEENTH.—The Tenant accepts the demised premises in their present condition unless otherwise herein expressly stated. The Landlord shall not be liable for any failure of water supply, electric current, mechanical refrigeration, if any, or other service. The Landlord shall not be liable for injury, loss or damage to the person or property of the Tenant caused by the elements, or by steam, gas, electricity, water, rain or snow which may leak or flow from any part of the demised premises or from the pipes, appliances or plumbing works of the same or from any other place, or by falling plaster, or by defects in the demised premises or in any improvements, alterations or repairs now or hereafter made thereto, or by any act or thing heretofore or hereafter done or omitted by the Landlord, unless caused by the negligence of the Landlord. The Tenant shall give the Landlord prompt written notice of any accident to or defects in water pipes, gas pipes, heating apparatus or other equipment or appliances in the demised premises. The Landlord shall not be liable for the presence of Croton bugs, vermin or insects, if any, in the demised premises, nor shall their presence in any way affect this lease. The Landlord shall not be liable for any latent defect in the building.

NO ABATEMENT

FOURTEENTH.—There shall not be any diminution or abatement of rent because of the making of repairs or improvements, if any be made, to the demised premises after the date above fixed for the commencement of the term, but the same are to be done with reasonable dispatch and with as little inconvenience to the Tenant as reasonably possible, it being understood that rent shall, in all events, commence to run at the date above fixed therefor. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for loss, inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances or from fumes or dirt issuing out of the heating or refrigerating equipment in the building, or from the closing or darkening of any windows of the demised premises from any cause whatever, or by reason of any space taken to comply with any law, ordinance or order of a governmental authority.

POSSESSION OF DEMISED PREMISES

DELAY IN GIVING POSSESSION

DEFAULT UNDER PREVIOUS LEASE

FIFTEENTH.—If the demised premises are available for occupancy before the date above specified for commencement of the term, the Tenant may then take possession of the demised premises provided and only upon condition that the Landlord consent in writing to the taking of such possession by the Tenant; and in the event that the Tenant thus takes earlier possession of the demised premises, the term of this lease shall be deemed for all purposes to commence from the time of the taking of such possession by the Tenant, but the Tenant shall not be required to pay any rental in addition to that above specified by reason of taking earlier possession of the demised premises unless otherwise provided. If the Landlord shall not be ready or able to give possession of the demised premises to the Tenant at the date above prescribed for the commencement of the term, then the date of the commencement of the term shall be postponed until the Landlord shall be ready and able so to give possession, and rent shall not run in the meantime but shall be apportioned as of the date that the Landlord shall notify the Tenant that the demised premises will be ready for occupancy; and the Landlord shall not be liable for damages, if any, sustained by the Tenant because of failure to deliver possession before the demised premises are ready for occupancy. The Landlord assumes no responsibility to the Tenant for delay in giving possession due to failure of present occupant of demised premises to vacate at termination of lease, except that the Tenant will be credited upon the rent next to accrue with an allowance equal to the daily pro rata amount of the rent multiplied by the actual number of days during which possession is withheld, and the Tenant agrees to accept the lease subject to such contingency and condition. If the Tenant shall, before the date above fixed for the commencement of the term hereof, default in the performance of any agreement by the Tenant herein or contained in any other lease or letting by the Landlord to the Tenant, then, at the option of the Landlord this lease shall not go into effect, and the Tenant shall not be entitled to possession hereunder.

NOTICE TO TENANT NO REPRESENTATIONS

SIXTEENTH.—The Tenant hereby acknowledges notice from the Landlord that no agent, manager or representative of the Landlord has the power or authority to either modify, cancel or accept a surrender of this lease, and that such power and authority is vested solely in the senior officers of the Landlord. No modification, cancellation or surrender of this lease shall be effective unless in writing signed by the Landlord by its duly authorized officers. The Landlord has made no representations or promises in respect to the demised premises except those contained herein, and those, if any, contained in some written communication to the Tenant, signed by the Landlord or the Landlord's agent authorized so to do.

ENTRY, ETC.

SEVENTEENTH.—That during three months prior to the expiration of the term hereby granted, the Tenant will permit the Landlord to place in a conspicuous part of the exterior of the demised premises, the usual notice offering the premises "To Let" and/or "For Sale," and will permit the same to remain without hindrance or molestation, and during such time applicants shall be admitted at all reasonable hours of the day to view the premises until rented; and the Landlord and the Landlord's agents shall be permitted at any time during the term to visit and examine the premises at any reasonable hours of the day, and workmen may enter at any time, when authorized by the Landlord or the Landlord's agents, to make or facilitate improvements, alterations or repairs in any part of the building; and if the said Tenant shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be necessary or permissible hereunder, the Landlord or the Landlord's agents may forcibly enter the same without rendering the Landlord or such agents liable to any claim or cause of action for damages by reason thereof (if during such entry the Landlord shall accord reasonable care to the Tenant's property) and without in any manner affecting the obligations and covenants of this lease; it is, however, expressly understood that the right and authority hereby reserved, does not impose, nor does the Landlord assume, by reason thereof, any responsibility or liability whatsoever for the care or supervision of said premises, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

ATTORNEYS' FEES

EIGHTEENTH.—If the Tenant shall at any time be in default hereunder, and if the Landlord shall institute an action or summary proceeding against the Tenant based upon such default, then the Tenant will reimburse the Landlord for the expense of attorney's fees, costs and disbursements thereby incurred by the Landlord, so far as the same are reasonable in amount; and the amount of such expenses, costs and disbursements shall at the option of the Landlord, be deemed to be additional rent hereunder, and shall be due from the Tenant to the Landlord on the first day of the month following the incurring of such respective expenses, or on the first day of any succeeding month.

EMINENT DOMAIN

NINETEENTH.—If the demised premises or any part thereof, be taken by virtue of eminent domain, or for any public or quasi-public improvement, this lease shall, at the option of the Landlord, expire ten days after notice to the Tenant; and in the event of the exercise of such option by the Landlord, the Tenant shall pay the rent pro rata, up to the time of the expiration of this lease and thereafter neither party hereto shall have any claim against the other by reason of such termination, and any and all awards for any such taking are assigned to and shall be made to the Landlord, and the Tenant shall not have any claim of any kind against any such award or awards.

SECURITY

TWENTIETH.—The Tenant has deposited with the Landlord, the sum of..Dollars, and agrees from time to time to pay to the Landlord, any sum or sums of money paid by the Landlord out of the sum so deposited, or deducted therefrom by the Landlord, pursuant to the provisions of this lease, to the end that at all times during the term of this lease there shall be continually deposited with the Landlord a sum which shall never be less than the amount originally deposited; the money so deposited shall remain with the Landlord as security for the faithful performance by the Tenant of all the terms, covenants and conditions of this lease until the date herein originally fixed for the expiration of the term, except as herein otherwise provided.

If the Landlord shall pay or be liable to pay any sum or sums of money whatsoever, or do or perform any act or thing on behalf of the Tenant, or make good any default by the Tenant hereunder, or if any penalty be assessed or imposed against the Landlord or any owner of the premises because of any default of the Tenant under this lease, any amount paid by the Landlord or such owner, or for which the Landlord or such owner may become liable together with all interest, costs, expenses, fees and damages, may be paid by the Landlord or such owner at its option out of such security or may be deducted therefrom. If the Tenant becomes insolvent or be adjudicated a bankrupt or applies for or takes the benefit of any bankruptcy or insolvent act or any act or statutory provisions for the relief of debtors, now or hereafter enacted, or makes a general assignment, or if a receiver or trustee be appointed for the Tenant's property, then in either such case said security shall be deemed to be and hereby is assigned to the Landlord; in any such event, or in case of any default by Tenant in performing the terms of this lease by reason of which this lease is terminated either by summary proceedings or by notice as herein provided, such security shall belong to the Landlord and shall be retained by the Landlord without any right thereto or to any part thereof by the Tenant, and the right to retain such security shall survive summary proceedings or other proceedings for the recovery of possession of the premises. Upon a sale or conveyance of the demised premises, the Landlord or any owner of the premises may transfer or assign such security to any new owner of said premises, and upon such transfer all liability of the transferrer or assignor of such security shall cease and come to an end.

LANDLORD'S LIABILITY

TWENTY-FIRST.—The term "Landlord" as used in this lease means only the party who for the time being is the owner, or the assignee of rents, or the mortgagee in possession, or the owner of a lease of the land and building of which the demised premises form a part, as the case may be; and the Tenant agrees that as, if and when any Landlord hereunder sells or transfers title to or conveys or assigns such land and building or lease, or in the event its or his rights under such assignment of rents or as mortgagee in possession are terminated, or in the event of any subsequent lease of the entire building, such Landlord shall be and hereby is wholly released, discharged and relieved of and from all of the covenants and obligations of the Landlord hereunder, and thereupon and thereafter the sole and exclusive right or rights, remedy or remedies and recourse of the Tenant for any subsequent violation or breach of the covenants and obligations of the Landlord hereunder shall be against the person, firm or corporation succeeding to the rights of such Landlord, whether or not such person, firm or corporation shall assume or agree to perform or comply with such covenants and obligations of the Landlord hereunder.

TWENTY-SECOND: The Landlord agrees to make all interior and exterior repairs not caused by the negligence of the Tenant.

TWENTY-THIRD: The Tenant is to pay all costs for providing hot water and heat.

TWENTY-FOURTH: The Tenant herein is not given by this instrument an option to buy the premises herein let.

TWENTY-FIFTH: The landlord herein reserves the right - to which the Tenant consents - for the Landlord to terminate this lease after six months on the giving of 30 days notice in writing to the Tenant by the Landlord of the Landlord's election to terminate this lease.

THE LANDLORD COVENANTS:

QUIET POSSESSION

That if and so long as the Tenant pays the rent reserved hereby, and performs and observes the covenants and provisions hereof, the Tenant shall quietly enjoy the demised premises, subject however, to the terms of this lease and to the mortgages above mentioned and provided for, and to any foreclosure of any such mortgages.

MARGINAL NOTES

The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease, and in no way affect this lease.

This lease, and every provision hereof, shall bind, apply to and run in favor of the Landlord, its successors and assigns, and of the Tenant and the heirs and personal representatives of the Tenant.

IN WITNESS WHEREOF, the Landlord and Tenant have signed and sealed this lease the day and year first above written.

Witness as to Tenant:

....(L. S.)
Landlord

....(L. S.)
Tenant

1. Call Clerk of Special I (Sup Ct. N.Y. County) and ask about procedure:

(a) Do you buy an index # first or serve first?

(b) When must Brief be submitted

2. In the order he advises:

(a) Buy an index # at County Clerk's office (basement of Sup Ct House, 60 Centre St.)

(b) Serve Louchheim or Bevier + 1 copy of minutes or anyone who will give you an admission of service at 270 Broadway (16th Floor).

3. File requisite number of copies + original with proof of service marked on it.

FORM FOR WELFARE TELEPHONE CALLS

Name of Client Raymond Clermont

Client's Welfare Center Ques. Date 9/20

Client's Case Worker Miss Ferrantino (14-4) Mrs Granger (U. Sup nn Phone 830-8425

Referred by

Case Number Number

Description of Case or Problem

1. Received mid-Sept check $168.70 instead of $173.70

2. Needs clothing for children

Action Taken

Name

I, undersigned, hereby state that upon ~~requis~~ three different requests from Mr. Raymond Clermont, I have made three loans to him, totalling $235.00 (Two hundred & Thirty five dollars), one on September 3, 1966, and two others on December 21, 1966, subject by him to pay me back

New York February 20, 1967

C Thomas

Camille Thomas

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20th DAY OF February 1967
Bernard Cohen Notary

BERNARD COHEN
NOTARY PUBLIC, State of New York
No. 44-5735901
Qualified in Rockland County
Cert. filed in New York County
Term Expires March 30, 1968

RCA INSTITUTES, INC.

A Service of Radio Corporation of America
Schools of Television and Electronic Technology

STUDENT Clermont, S. Raymond

Course V-7 Morning
Term Summer Iv sec 2

From May 23, 1967
To August 11, 1967

Hour	Monday	Tuesday	Wednesday	Thursday	Friday
8:00 to 8:55	~~[illegible]~~ 214 EF-11	~~[illegible]~~ 410 EF-10	201 EF-11	410 EF-10	410 EF-10
9:00 to 9:55	"	"	"	"	"
10:00 to 10:55	"	407 EF-11	214 PD-10	"	410 EF-11
11:05 to 12:00	~~B. Rechnik~~ 214 PD-11	~~B. Rechnik~~ 407 EM-11	"	410 EM-11	"
12:05 to 1:00	"	"	"	"	410 EM-11

Books and Supplies

COOKE, Basic Mathematics for Electronics
COOKE, Answer book to above
GROB, Basic Electronics
RCA, Receiving Tube Manual
Project Development Construction Project, PD-10
RCAI, Laboratory Manual PD-10
RCAI, Laboratory Manual EF-10

ADDITIONAL FOR NEW STUDENTS ONLY
Slide Rule, N1010 ES
Three Ring Looseleaf Binder (RCA Emblem)

	EF-11	Mr. Blitzer	
lab sec —	EF-10	"	
	EM-11	Mr. Glick	
	PD-10	Mr. Nancoz	lab section
	PD-11	"	

Sponsored by.	Acct. No.	Issued by	Date Issued
Forein	29590		5-22-67

Time: March 17, 4:15-5:15 p.m. (approx.)

Subject: Emergency and other welfare payments for Mr. Claremont

Participants in conference: Mr. Claremont; his counsel, Mr. Nagler; Mrs. Percival and Mr. Taylor of Welfare.

. . . .

Mrs. Percival began the meeting by indicating that the purpose of the joint gathering was to interview Mr. Claremont as to welfare, not for our questioning of the department. Mrs. Percival indicated that there were two things bothering her in particular. 1) Why had not Mr. Claremont been able to get a statement from his landlord as to type of tenancy (amount of rent, heating, repairs outside and inside), and 2) How had Mr. Claremont been able to live without payments, where had he gotten the money, and had he used a bank account for his own purposes in the past few months.

At this point, Mr. Nagler asked Mrs. Percival why the Dept. wouldn't call Claremont's landlord in light of the fact that the landlord was not willing to sign any statement as to type of tenancy until he had gotten assurance of payment, which he couldn't get until Mr. Claremont got back on welfare. Mrs. Percival said that the Dept. couldn't make an exception for one person when policy was exactly opposite, and said she couldn't understand why Claremont couldn't get the statement. Mr. Claremont at this point interjected that he couldn't get the statement unless he first made some sort of payment to the landlord.

Mr. Taylor said the policy of not paying the rent until the type of tenancy was described is good practice, in that it protects the department and Claremont as well, since negotiations between landlord and tenant might drag on for months if payments were made in advance.

Mr. Claremont again indicated that the landlord just wasn't willing to give a statement until some form of rent were paid, and offered a disposeession notice given by the landlord which had standard lease terms on it, but which hadn't been signed by the landlord. Mrs. Percival said that although this gave the terms of the lease, it wouldn't do, since it wasn't signed, and thus wasn't "proof" that the landlord intended to make the type of rental described in the dispossession notice.

Finally, Mrs. Percival asked Claremont if he had asked landlord for statement, whereupon Mr. Claremont said he had and had told the department he had a number of times. Mrs. Percival repeated her question, Claremont again said yes, and Mrs. Percival said, "alright, that's the end of it, we'll take the dispossess and discuss it."

Mr. Taylor then asked why Claremont had not been in in the last few days, as welfare wanted to help him and his children. Mr. Claremont said that he had been in there every few days for weeks, and had gotten nothing but questions and accusations from welfare.

At this point, Mr. Nagler told Mr. Taylor of Claremont's request for aid, including food money, rental, including back rental withheld by welfare, carfare for twenty trips or more, money to take care of the fire damage in Claremont's last apartment which had still not been paid, and tuition money for Mr. Claremont to go to school for retraining.

Mr. Claremont indicated that he would make the case into an emergency assistance situation treat the case as one requiring emergency assistance, and tendered a check, already made out, for food allowance only.

At this point, Mr. Taylor inquired about a withdrawal of $280 by Claremont from Chemical Bank. Mr. Claremont said it was to meet a loan, that the money had been there since 1966, and that the money was tied up to pay the loan he had raised to bring his wife and children to the U.S. Taylor asked why he had drawn out the money to pay the loan in advance when he needed the money so badly to give security for the rent. Mr. Claremont said that the money was completely tied up for the loan, and couldn't be touched otherwise, so why not pay off the rent, and indicated that he couldn't stand being in debt.

Mr. Nagler then asked Mr. Taylor if welfare hadn't known all along that the bank money was tied up, and Mr. Taylor said no, he didn't know it now.

Mrs. Percival said that the bank statement indicated that Claremont had made payments on the loan while he was on assistance, and asked where he had gotten the money. Mr. Claremont said he had paid it partially from his bank account and partially from assistance money. Mrs. Percival said paying off loan from welfare money was illegal, and Mr. Claremont said he hadn't been aware of that fact. Mr. Nagler and Mrs. Percival agreed that the language difficulty could have something to do with this, and Mrs. Percival said nonetheless, the record shows that the caseworker told Mr. Claremont about payment on loans. Welfare was unaware of such payments, and this and other things indicate to us that Claremont has outside assets. Mr. Taylor said that it was "legal!" to assume from the record that Claremont was aware that he wasn't supposed to use welfare money to pay off the loan.

Mr. Taylor then indicated that it was necessary to investigate this "whole bank thing" before increasing Claremont's payments. Mr. Nagler asked if this was necessary to get Claremont assistance, since it was obvious that he needed money for himself and his children. Mr. Taylor said that if a person is able to pay off loans, then this is evidence of outside assets, and as a keeper of public funds, he would have to check it out.

Mrs. Percival said that before she left the office she wanted to get something straight with Mr. Nagler. She said that she had never been able to get a confirmatory statement from Claremont's doctor about the extent of his back injury. Mr. Nagler asked if Mrs. Percoval was blaming Claremont for the non-cooperation of the doctor, and she said no. Mr. Nagler said that what appears to be non-cooperation on the part of Claremont might be due to the fact that questions he or those connected with him answer turn into problems. Mr. Nagler said that the relationship between welfare and the client was supposed to be confidential, and that it was strange that Mrs. Claremont always seemed to know of the whereabouts of her husband.

Mrs. Percival said that a person receiving welfare has no right to be edgy about questions, and said that a person in need should have some humility. At this point, Mrs. Percival excused herself from the meeting.

Mr. Taylor asked Mr. Claremont if he could get statements from the people who had given him loans while he was off welfare so that he would be sure that Claremont had no hidden assets. Claremont said he would get signed statements as to the loans.

Mr. Taylor then asked Mr. Nagler if it would be alright to investigate those who had allegedly given the loans to Claremont, and Mr. Nagler said that it should be sufficient if the statements were verified.

Mr. Nagler then asked if there were any more questions Mr. Taylor wanted to ask of Mr. Claremont at this time. Mr. Taylor said no, there were not. Mr. Nagler again objected to the fact that Claremont was only getting food money, and not full emergency assistance, nor reimbursement for lost clothing, back rental, and carfare. Mr. Taylor offered Claremont carfare out of his pocket when he learned that petty cash was closed for the afternoon, and Mr. Claremont wrote a receipt for the $.50 sum. Mr. Taylor indicated that he had offered Claremont carfare "once before" but that Claremont wouldn't take it, indicating that it was beneath his dignity. Mr. Nagler again objected to the amount of the check, thanked Mr. Taylor for his time, whereupon the interview ended.

1.

Raymond Clermont
97-64 Corona Ave, Queens
Case # 2508457 Non Residence Welfare Center Unit 36

554-8841

Caseworker-Susan Bradshaw (Unit 36) (hasn't handled case in last month or two)
Supervisor- C. Imperial (he hasn't touched the case)
Old Supervisor- J. Taylor (he does all the work on the case although it is officially no longer in his unit.) (Unit EE) (training) 554-8847
Case Supervisor-Miss Percival (but she refers everything back to Mr Taylor)
(for Mr Taylor)
554-8782

Raymond Clermont--born in Haiti, political refugee in US since 1963. was able to get wife and 5 kids out in March 1966 and they came to NY. Mr C. then went on Welfare. He also worked at the Museum of Natural History but suffered a back injury on the job in 1965 and often had to miss work because of it. In Dec 1966 he quit the job completely. He is now separated from his wife. He went to court 2/28.67 to obtain a divorce and it was granted but will not be final for 3 months. He has custody of the children but his wife is now trying to get them back. Mr Taylor is in frequent contact with his wife and referred her to Legal Aid to try to get the children. Mr C is more concerned with keeping the children than with winning the battle with Welfare (until the divorce is final) but it will be very hard for him to manage without welfare. Mr C plans to go to school (RCA) to be retrained in electronics so as eventually to be able to support his family but he needs to stay on Welfare until then.
Mrs Laurent Clermont is presently on Welfare too and expecting a baby soon.

Children: Raphael, age 12
Yemille, age 11
Alexandra, age 9
Philippe, age 8
Patrick Joel, age 5

Mr C has been having trouble with Mr Taylor for several months. Mr Taylor would not let him go to the RCA institute for retraining. The Mr C's apartment burned down and when he found another one in Queens (same rent) Mr Taylor said he could not move there (no reason given). Mr C moved anyway (on my advice that Mr Taylor had no right to forbid him to move) and Mr Taylor the stalled about paying the rent and security. Mr Taylor wouldn't change Mr C's address so his checks were returned to the office undelivered and Mr Taylor wouldn't give them to Mr C which is the usual procedure. Mr Taylor kept making Mr C come to the office but only asked him questions instead of giving him money. He was finally given $18 and then sent $42 (the first money he received since Jan 16 and this was about Feb 6). Mr Taylor finally kicked Mr C off welfare (the letter was dated Feb 17 or 19 but was received Feb 25) for the following reasons: 1) Mr C had unreported assets (this refers to a bank account Mr C had told Welfare about and Mr Taylor admits that--he even asked me to find out more about it.) 2) paying debts with Welfare money (this relers to a loan taken by Mr C before he was on Welfare to get his kids to the US which welfare also knew about but wouldn't pay. He made some payments on it while he was working, then stopped. His bank account was frozen and held against the loan. Feb 10, after he had not gotten money from Welfare and was getting hungry, Mr C closed his bank account, paying the bank $280 on the loan and keeping $30 for himself.

Mr C has written several letter to Mr Ginsberg and Lindsay complaining about the treatment he is getting. He has charged Mr Taylor with discrimination and has described some of what has happened. No action has been taken. I was in Mr Taylor's office when he heard about a letter to Mr Ginsberg and he got very mad because he said hat meant that he had to prove he was right. He then began to say that Mr C had a persecution complex. Then he decided Mr C should see the psychiatrist. I am not sure whether this is to make him look better or to help Mrs C in her fight for custody. I asked him how he dared say Mr C had a persecution complex when he actually was persecuting him to the best of his ability but I received no answer.

Mr. C called Thurs, 2/23 to say he would be in later in the day. Mr Taylor arranged for the psychiatrist to see him. Mr C was not told about this. Mr C did not come after all, because he discovered he didn't have enough money and called the next morning. When I told Mr Taylor, he told me about the psychiatrist and I told Mr C. Mr Taylor was furious at me for that and has forbidden me to speak with Mr C since.

Wed, 3/1 Mr C came to the office to ask again for money. He was told he could not get any until he saw the psychiatrist and to come back on Thurs. Mr C did not. On Friday he went (at the advice of myself and another caseworker who had handled the case and did not agree with Mr Taylor) to City Hall where he spoke with Mr Melton (566-5700). They called, spoke with Mr Taylor, sent him to Welfare where they had him fill out reapplication forms, gave him $35 to last until next Thurs and told him he had to see the psychiatrist to get more.

Mr C does not want to see the psychiatrist because he is afraid they will use it against him to help his wife get custody of the kids. Mr Taylor told me that they could not keep Mr C off welfare as long as he had the kids but he thought Mr C should not have them. Mr Taylor has told Mrs Clermont thingsabout Mr C that were in the case record and theoretically confidential (I can't prove that unfortunaately). I believe he might use the psychiatrist's report to help her is he could.

While Mr C was at the Welfare Dept Friday, a caseworker was sent to his home. Raphael had just returned from school and let him in. The man looked all over the apartment and the left and made a phone call from the corner. Mr C was told by a friend of his wife's (although he couldn't say this publically) that his wife was going to have Mr C arrested for deserting the kids because the caseworker found the kids alone (when they were deliberately holding him at the office.)

Mrs Clermont believes that Mr C has a rich girlfriend who supports him and has told this to Welfare. This was perhaps another reason for the visit to Mr C'sapartment in his absence--to see if traces of her could be found.

Before Mrs C got on Welfare, Mr C gave her a little money out of his welfare check so she could eat. He took her to the Welfare Dept several times to let her apply (she speaks no English so he tookd her) but Mr Taylor said that since he was giving her money she couldn't geton welfare. Mr C explained that he couldn't afford to, as Mr Taylor well knew but Mr Taylor said too bad. Mr C finally stopped giving her money and they did accept her case.

Mr Taylor also used this logic when I asked him to pay Mr C's rent. He said he wouldn't until Mr C had a lease. The landlord, of course, wouldn't give him a lease until he paid the rent. I called the landlord and he assured me that as soon as the rent was paid (Mr C had only paid the security) he would give him a lease. Mr Taylor refused although he has not done thisfor anyone else.

Asked of Mrs Tracy; [illegible] taking kids?

I filled out forms to give Mr C the rent& security but Mr Taylor refused to sign the forms. I also filled out a form to change Mr C's address which Mr Taylor refused to sign so Mr C's checks kept going to the old address.

After the fire Mr C was given about $280 to replace all the clothes and furniture that burned (almost all). That was all he was given.

Mr Taylor is no longer Mr C's supervisor yet he is still handling the case. And all this in spite of Mr C's complaints of discrimination. All decisions are made by Mr Taylor or on his recommendation. No one above Mr Taylor has ever met Mr C. I questioned this once, saying I disagreed about the case, could I tell his superior. Mr Taylor said no, that I should tell him what I think and he would tell his superior what he thought. Everytime Mr C complains, the complaint gets referred to Mr Taylor. Mrs Jones, a social worker from a hospital called to complain about Mr Taylor and then was told, after she complained about the handling of the case that she was speaking with Mr Taylor. She is very concerned about the case and will do what she can to help (870-6217). 6084

(Unit 36-5)

I can be reached at work at 554-8840~~,2,3,4~~ 19. or at home at (201) 656-7876.

Helen Garvy

Landlady — Mrs Tracy - De 5-6029

Real Estateman — Alfredo Picont - NR2-6400

38-21 - 111 th. St.
Corona, N.Y.

Mr C wants:

case re-opened without psychiatrist visit
money owed him--security, moving expenses, back rent, food money owed.
money for furniture & clothes destroyed by fire
case removed from Mr Taylor's jurisdiction

Atty for wife — Shirley Schwartz Ba 7-2355

suspension lifted - last week.

La Prensa - El Diario -
Amalia Burgess - Wo 6-3400

lawyer (divorce) - Mr Karakas Co 7-8112

P.S. 9 -
P.S. 13 -

Burke Pearson: I interviewed Clermont several times, sent him to City Hall. ~~Ext~~ 554-8849

Burke Pearson - another caseworker who has seen Mr C. & who disagrees with Mr Taylor.

Asked of Mrs Tracy:

1. Who watches kids?

# 2. Wasn't supposed to move. Moved w.o. permission.

3. Who is Picone?

4.

New unit: Unit 1 - worker - Miss Volpe 554-8333

Unit Supervisor - Mrs Kotter

[illegible] NEW YORK VS. CLERMONT, RAYMOND 1967-1968

Box 40
Folder 8

State Historical Society Of Wisconsin

Please Retain Original Order

X 273—Writ of Habeas Corpus. 9-63
Blank Court. 9-63

UNDER DOOR

COPYRIGHT 1963 BY JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE, AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. 1780/1967

THE PEOPLE OF THE STATE OF NEW YORK EX REL: LAURENTE CLERMONT, on behalf of RAPHAEL, RAYMONDE, ALEXANDRA, PHILLIPE and PATRICK CLERMONT, infants,

Petitioner

against

RAYMOND CLERMONT,

Respondent

WRIT OF HABEAS CORPUS

The People of the State of New York

upon the relation of LAURENT CLERMONT

TO RAYMOND CLERMONT
97-64 Corona Avenue, Jackson Heights, N.Y. *Greeting:*

WE COMMAND YOU, *That you have and produce the bod~~y~~ies of* RAPHAEL, RAYMOND, ALEXANDRA, PHILLIPE and PATRICK CLERMONT *by you imprisoned and detained, as it is said, together with your full return to this writ and the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged before* ~~Hon~~ Special Term Part 2, in Courtroom 66, 6th Floor, before *one of the* Justices *of the* Supreme *Court of* the State of New York, *county of* Queens *at* Special Term, Part II, 88-11 Sutphin Blvd, Jamaica *in the courthouse thereof on the* 22nd *day of* March 19 67 *at* 9:30 AM. *to do and receive what shall then and there be considered concerning the said person and have you then and there this writ.*

WITNESS, *Hon.* HON. J. IRWIN SHAPIRO *one of the* Justices *of our said Court, the* 1st *day of* March 1967.

s/ PAUL LIVOTI *Clerk*

MARY B. TARCHER
Attorney(s) for Petitioner
THE LEGAL AID SOCIETY
Office and Post Office Address
11 park place
NEW YORK, NEW YORK 10007
SHIRLEY B. SCHWARTZ, of counsel.

The within writ is hereby allowed this 1st *day of* March 19 67.

DATED: JAMAICA, NEW YORK

s/ HON. J. IRWIN SHAPIRO
J. S. C.

AFFIDAVIT OF SERVICE

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the proceeding, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the petition for habeas corpus and the within writ on

the respondent therein named, by delivering a true copy of each to said respondent personally; deponent knew the person so served to be the person described as said respondent therein.

Sworn to before me this

day of 19

Index No.

COURT

COUNTY OF

Petitioner

against

Respondent

WRIT OF HABEAS CORPUS

Attorney(s) for Petitioner

Office, Post Office Address and Telephone No.

X 272—Petition for Writ of Habeas Corpus. 9-63 x COPYRIGHT 1963 BY JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. 1780/1967

THE PEOPLE OF THE STATE OF NEW YORK EX REL: LAURENTE CLERMONT, on behalf of RAPHAEL RAYMONDE, ALEXANDRA, PHILLIPPE and PATRICK CLERMONT, infants, *Petitioner*

against

RAYMOND CLERMONT, *Respondent*

PETITION FOR WRIT OF HABEAS CORPUS

To: THE SUPREME COURT OF THE STATE OF NEW YORK: COUNTY OF QUEENS

The petition of LAURENTE CLERMONT *shows that:*

1. *This petition is made on behalf of* RAPHAEL, 12½, RAYMONDE, 11, ALEXANDRA, 9, PHILLIPE, 8 and PATRICK CLERMONT, 6 *who is detained by* RAYMOND CLERMONT, at 94-64 Corona Avenue, Jackson Heights, New York.

2. *The cause or pretense of the detention, according to the best knowledge and belief of the petitioner is,*

   Respondent's refusal to return the children to petitioner.

3. *That a court or judge of the United States does not have exclusive jurisdiction to order the release of said person.*

4. *This writ is sought because of an illegal detention, the nature of the illegality being* : Your petitioner and respondent were married September 30, 1953 in Haiti and the five infants, the issue of this marriage, are the issue of this Writ. On December 5, 1966, respondent forcibly put the petitioner out of the home and has withheld the five children from her since that date. Petitioner has been allowed to see the children only ~~An appeal has been taken from the order by virtue of which said person is detained. The result of said appeal is~~ twice in the past three months and has requested the return of the children but respondent has refused to return the children to petitioner despite repeated requests from both her and the Department of Welfare. Petitioner believes that the children should be with her.

5. The infants herein have not been detained by virtue of the order of any court of competent jurisdiction.

No previous application has been made for this relief

Wherefore your petitioner prays that a writ of habeas corpus issue, directed to the respondent, requiring the respondent to produce the said Raphael, Raymonde, Alexandra, Phillipe & Patrick *before a justice of this court at* Special *Term, Part* II *thereof on* March , 1967.

Dated: the 1st *day of* March 1967 .

s/ Laurente Clermont
Petitioner—print name beneath signature
LAURENTE CLERMONT

MARY B. TARCHER
Attorney(s) for Petitioner
Office and Post Office Address
THE LEGAL AID SOCIETY
11 PARK PLACE
NEW YORK, NEW YORK 10006

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss.:*

LAURENTE CLERMONT *, being duly sworn, deposes and says that* she *is the petitioner in the within proceeding; that* she *has read the foregoing petition and knows the contents thereof; that the same is true to* her *own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters* she *believes it to be true.*

Sworn to before me, this 1st
day of March 1967

s/ LAURENTE CLERMONT
Petitioner

SHIRLEY B. SCHWARTZ, Notary Public
State of New York No. 31-8877950
Qual. in N.Y. Co., Cert. filed with
New York Register's Office. Term Expires March 30,1968

Index No. 1780-1967

SUPREME COURT
COUNTY OF QUEENS

Petitioner

against

Respondent

Petition

FOR WRIT OF HABEAS CORPUS

Attorney(s) for Petitioner
Office, Post Office Address and Telephone No.

9.15

EXHIBIT #1

TRANSCRIPT OF THE MINUTES
IN THE FAIR HEARING OF:
RAYMOND CLERMONT

State of New York
Department of Social Welfare

In the Matter of the Appeal of

RAYMOND CLERMONT

From a Determination by the New York City Department of Welfare in order to determine the issues affecting the adequacy of a Grant of Aid to Dependent Children.

DATE OF HEARING: May 24, 1967

PLACE OF HEARING: 270 Broadway,
New York, N.Y.

BEFORE: S. GERALD DUCKOR,
Referee.

REPORTED BY: GERALD C. KAYE,
Hearing Reporter.

APPEARANCES:

APPELLANT:
Raymond Clermont.
Steven Nagler, Esq. - Attorney.
Helen Garby - Caseworker.

NEW YORK CITY DEPARTMENT OF WELFARE:

Mabel Sharon - Fair Hearing Representative.
Marvin Epstein, Esq. - Attorney.
Eloise Percibal - Supervisor II.
Robert Ketler - Supervisor I.
Antoinette Volpe - Caseworker.
Frieda Lack - Assistant Deputy Director.
Mae Feinstein - Fair Hearing Adminstrator.

NEW YORK STATE DEPARTMENT OF SOCIAL WELFARE:

Eleanor Blakely - Senior Welfare Representative.

Form LG-110 (12/66)

THE REFEREE: My name is Gerald Duckor and I have been designated by the New York State Department of Social Welfare to act as Referee in this matter.

This is a fair hearing being held at the request of Mr. Raymond Clermont appealing a determination made by the New York City Department of Welfare. The Social Welfare Law provides this opportunity for a recipient of public assistance to appeal any determination he deems adverse to his interests, and the Agency charged with the administration of public assistance can explain the reasons for its determination.

The agency will put in its case first, explaining what it did and why. The appellant will then put in his case. Each side will have the right to question the other..

Minutes of the hearing will be kept, and on the basis of the record the State Commissioner of Social Welfare will render a decision which will be binding on both parties, subject to any provision of Law for review.

Copies of the decision will be sent to both sides.

It appears, in this particular case, that several issues have been raised since the demand for a fair hearing was first made. Some of these have been resolved, and other complaints have been thereafter raised.

Prior to the hearing a conference was had by Mr. Nagler, the attorney for the appellant and Mr. Epstein, the attorney for the Agency. An agreement was reached that the following issues would be raised at this hearing:

1. The appellant claims funds for a homemaker or babysitter.

2. The appellant asked to be reimbursed for appearance fees expended by him in a custody proceeding, and,

3. The appellant objects to what he states is a violation of the confidentiality of the case record, thereby causing him a pecuniary loss.

These three issues are new and have not been raised before. Two issues had been raised originally, to wit, reimbursement for carfare he expended during January and February of 1967, when he was compelled to appear at the local agency office on numerous occasions.

And, the 5th issue, which also was raised originally, would be the wrongful discontinuance of public Assistance on February 17, 1967.

Now, as to the fifth issue, it appears that the appellant has been restored to public assistance and that any monies he should have received during that period have been returned to him or, have been paid to him. Therefore, it is ruled that that issue is now academic and will not beegone into at this hearing.

As to the other four issues, on the one involving the homemaker and reimbursement for the carfare, our usual procedure will carry on. That is, the Agency will proceed first. As to the other two issues the appellant will go first.

I think we will take each issue individually if it's all right with you. We will start with the homemaker.

MR. NAGLER: If I may. First, I would wish to offer a correction as far as the first issue is concerned, as to having been previously raised.

The matter has been discussed with center personnel, more particularly, with the caseworker, Miss Volpe and the case supervisor, Mrs. Percibal.

It had also been raised in the past, prior to December of 1966.

THE REFEREE: Yes, I think you are correct, Mr. Nagler. Actually, it hadn't been articulated in that particular letter, and, in effect, it has been raised.

MR. EPSTEIN: I want to clarify -- is he asking --

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

The first issue which we will take up is the request for the sum of $40 to be included in the budget of the appellant to pay for a homemaker, to wit, a Mrs. Marion Buckingham. The request is made to have this amount applied retroactively from April 17 to April 30, and then again from May 23 to date, and in the future.

Now, Mr. Epstein, will you present on that point?

MR. NAGLER: In advance --

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

MABEL SHARON, called as a witness, testified as follows:

BY MR. EPSTEIN:

Q Mrs. Sharon, what was the first time the Department had any knowledge that Mr. Clermont was requesting payment for Mrs. Buckingham's services as a housekeeper?

A The letter that the Welfare Center received from Mr. Nagler dated April 20, addressed to Mrs. Volpe, the caseworker.

MR. EPSTEIN: I offer this in evidence.

THE REFEREE: The Agency has offered in evidence a letter dated April 20, 1967, from Mr. Steven Nagler to Mrs. Volpe.

Any objection, Mr. Nagler?

MR. NAGLER: None.

THE REFEREE: It is accepted and marked Agency Exhibit 1.

(Agency's Exhibit No. 1, received and marked into evidence.)

Q Now, do you have Mr. Clermont's case record with you?

A Yes.

Q And, does that case record contain any information with reference to investigation done by the worker handling the case with reference to Miss Buckingham?

A Yes, it does.

Q And when was this investigation conducted?

A During the month of May.

Q MR. EPSTEIN: I will offer now, at this time, certain entries contained in Mr. Clermont's case record. We will, of course, give counsel opportunity to look at this before they are offered in evidence. But, they are being offered in evidence.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Two pages, typewritten on both sides, of the case record of Raymond Clermont have been offered by the Agency. Mr. Nagler, I show you these and ask you if you have any objection to these being offered in evidence.

MR. NAGLER: Without having examined these portions of the case record, I have to have an objection first, based on the fact that the regulations of the Department of Social Welfare of the State of New York are violated by omission of such documents.

THE REFEREE: In what respect?

MR. NAGLER: In the sense that we have not been provided with them in advance.

THE REFEREE: Have you demanded them?

MR. NAGLER: We have made a demand for them by a letter to the Commissioner asking for any documents that are going to be offered in evidence.

THE REFEREE: Mr. Nagler, in view of the fact that this issue was never specifically raised in any of your letters, it is apparent the Agency has not given you copies of these. If you want time to look them over you may have it.

Now, if you feel you need more than this time we will adjourn the hearing.

MR. NAGLER: That might be my first objection, but, I further object to them because they are incomplete as records made in the ordinary course of business, which is the only purpose for which they are introduceable. They do not necessarily reflect the entire course of events as the entire issue before us today and, as such, they are not properly before us at this hearing.

THE REFEREE: That objection is overruled.

Now, Mr. Nagler, what do you want to do on these?

MR. NAGLER: I would like to look them over first of all, before we do anything else.

THE REFEREE: Off the record.

(Off the record)

THE REFEREE: On the record.

These copies of the case record have been shown to Mr. Nagler, and, I ask you again, Mr. Nagler, do you object to them being offered in evidence on the first ground that you haven't seen a copy of them beforehand?

MR. NAGLER: I do object. But, I am waiving my objection. I do object, but, that no hearing should be held under the regulations.

THE REFEREE: Mr. Nagler, are you requesting an adjournment?

MR. NAGLER: I am not asking for an adjournment. But, for a reduction -- strike that -- an exclusion of these documents because they were not furnished in advance, and that the hearing be permitted to continue, and, my further objections to these documents is that they are loaded with irrelevencies; hearsay matter, thoroughly without relation to fact and prejudicial to the client, including innuendoes of various sorts.

THE REFEREE: All right, your objection is overruled. I will allow them in for what they are worth. You have indicated that you do not wish a continuance of this hearing to give you more opportunity to study them and that would be the only ground that they would not be admitted at this time. Due to the fact that that is the reason, they will be admitted and marked Agency's Exhibits 2 and 3. Copies will be made and submitted to the appellant.

MR. NAGLER: Exception to the first part of the ruling.

THE REFEREE: Now, Mr. Epstein, will you proceed?

MR. EPSTEIN: To present the Local Agency's case, I would like to call Mr. Ketler now.

THE REFEREE: Are you finished with Mrs. Sharon?

MR. EPSTEIN: On this particular issue, to tell a continuous narrative as to this issue, I think it proper to call Mr. Ketler now.

THE REFEREE: Mr. Nagler, will it be all right for Mr. Ketler to proceed with his testimony?

MR. NAGLER: Yes.

ROBERT KETLER, called as a witness on behalf of the Agency, testified as follows:

BY MR. EPSTEIN:

Q Mr. Ketler, are you employed by the Department of Welfare?

A Yes, sir.

Q In what capacity?

A Supervisor I.

Q To what welfare center are you assigned?

A Non-residence.

Q Is your unit the unit that services Mr. Clermont's public assistance case?

A Yes.

Q Now, sometime in May, 1967, did the unit receive information from Mr. Nagler that Mrs. Buckingham had been on public assistance in the State of New Jersey?

A Yes.

Q And, did you personally make any investigation with public welfare authorities in the State of New Jersey as to the public assistance case of Mrs. Buckingham?

A Yes.

Q What did you do and what did you learn?

A Well, we called the Jersey --

Q Do you have any -- if you have any notes with you that will refresh your recollection you can look at them.

MR. NAGLER: I would like to know the relevency of this.

MR. EPSTEIN: It's relevant.

MR. NAGLER: You have my objection.

A When we first called the Department of Welfare in New Jersey to find out if there had been a case under the name of Marion Buckingham, in tracing their files they found it was under the name of Marion Eleanor Dennison Buckingham, and it had been originally became known to them in '60, I am not sure of the date. They had transferred it at some later date because there was a New Jersey case, to the Hudson County Welfare Department, and I made a call to the Hudson County Department of Welfare and asked them if they had known to them the case of Marion Buckingham and they said, they have. I spoke to Mrs. Perrone (phonetic) in the record section, who said that the case had recently been closed effective 5/5/67, as she, the client -- well, for two reasons. There had been no contact with the client -- with their client, and there was a question of rent. The 5/1/67 check had been stopped because rent had been owed to the landlord there. Also, they had received a letter from Miss Buckingham advising them that she was getting married and would no longer need public assistance. We asked -- I asked her if she could give us information on the case, you know, any pertinent information, and forward it to us, and she said she would.

Q And, did you receive any information from the Hudson County Welfare Board?

A Yes, we did.

Q I show you this letter and photostatic sheets attached thereto. Would you tell me what they are?

A The first one is a summary report of a home visit dated 3/6/67, made by the caseworker --

THE REFEREE: Mr. Ketler, please excuse me for interrupting, but, let me ask you this before you go any further on this point. These things that you are testifying to about Mrs. Buckingham's case in New Jersey, did that have anything to do with your determination as to whether or not she should be a homemaker?

MR. KETLER: Yes.

THE REFEREE: Was that the basis for your determination that you would not pay for this woman's services as a homemaker for Mr. Clermont?

MR. KETLER: In the final analysis, yes.

Q Is Mr. Clermont's name mentioned in Mrs. Buckingham's case record?

MR. NAGLER: I object to that as to relevency. I object to this entire matter. It contains confidential material as to the standpoint that this is confidential Jersey information. I will be extremely concerned with how this information was obtained; by whose authority, whether by Mrs. Buckingham's, which I am certain it was not, or by anyone else's, and I would wish the Attorney General of the State of New Jersey or, alternately, the County Attorney of the State of Hudson County to explain as to the breach of confidentiality in this case.

THE REFEREE: All right, Mr. Nagler. As to your objection on the ground that it's not material, it's overruled; your entire objection is overruled as to having it admitted in this particular hearing. As far as its confidentiality, it's nothing that I can decide at this point.

Q Is Mr. Clermont's name mentioned in that case record?

A Yes, it is.

Q In what capacity?

A In the dictation on the regular home visit that was made. It very briefly mentions -- well, do you want me to read this?

Q Read it into the record.

A "Putative father of the client's last child, Raymond Clermont. This individual is on a court order to pay the client $10 a week for the child he fathered." And, in addition --

THE REFEREE: If you are going to offer it in evidence there is no point in reading it.

MR. EPSTEIN: We will offer it.

MR. NAGLER: I will renew my objection on the previous basis. And, I renew my objection that this material in the case record which most certainly has not been offered to the client in preparation for the hearing. This is thoroughly a sham.

THE REFEREE: Mr. Nagler, there is no question that this has never been offered to you, and I don't think the Agency has denied that fact. Again, all I can say is, if you want time to go over this you may have it.

MR. NAGLER: I think my remedy is not time to go over it but exclusion of this material from the case record in the sense that it hasn't been offered and it is sprung on us at this point.

THE REFEREE: I refuse to disallow it on that basis. I will allow you to go over it today or, another day.

MR. NAGLER: Well, to go over that, I think that to go over it now -- and, in terms of the inconvenience to the client in the terms of coming back --

THE REFEREE: I understand that, but, this specific issue was never specifically raised, and I understand the fact that the Agency did not give you copies of this beforehand.

MR. NAGLER: Well, it was specifically raised with the Agency on numerous occasions.

THE REFEREE: However, I will not exclude it, however, I will say that you may have time to go over it today or another day. It has been offered in evidence and I will hand it to you and give you time to go over it and we will take a recess to give you time to go over it.

MR. NAGLER: Well, I wish to introduce again that this is most shocking.

THE REFEREE: All right, you have stated that before.

MR. NAGLER: All right. Note my exception.

THE REFEREE: We will now take a short recess.

(A short recess was taken)

THE REFEREE: On the record. Mr. Nagler, you have read this information that the Agency has submitted. Do you have any other objections to it being offered in evidence other than what we have already discussed?

MR. NAGLER: I renew those.

THE REFEREE: It is accepted and marked Agency Exhibit 4.

(Agency's Exhibit No. 4 received and marked into evidence)

MR. NAGLER: Excuse me, I have one other. It is not the best evidence of anything.

THE REFEREE: That objection is overruled. Also, the entire document with the heading of the, "Hudson County Welfare Board," will be marked as one exhibit. Copies will be made and given to Mr. Nagler.

Mr. Epstein, you may proceed.

MR. EPSTEIN: That's all of Mr. Ketler.

THE REFEREE: Do you have any other evidence on this point?

MR. EPSTEIN: I want to call Mrs. Percibal to establish what the Department's position is.

THE REFEREE: All right.

ELOISE PERCIBAL, called as a witness on behalf of the Agency, testified as follows:

BY MR. EPSTEIN:

A I discussed the question of paying Mrs. Buckingham with my Senior Case Supervisor, Mrs. Palevsky, and on the basis of the information that we had obtained from Hudson County in Jersey, the decision was that we would not pay for the services at this time.

Q Mrs. Percibal, what would be the Department's position if Mrs. Buckingham would apply for public assistance?

THE REFEREE: That's immaterial.

MR. NAGLER: I have no objection to it.

MR. EPSTEIN: I will withdraw the question.

MRS. PERCIBAL: I would like to answer that.

MR. EPSTEIN: I don't want it answered.

THE REFEREE: Mrs. Percibal, please. Anything else?

MR. EPSTEIN: That's all.

THE REFEREE: I have a couple of questions.

BY THE REFEREE:

Q Is Mr. Clermont -- do your records indicate whether or not Mr. Clermont is eligible to have a housekeeper now?

A Well, not on the basis of Mrs. Buckingham in the household, because we cleared with our homemaking service. We did try to get a homemaker for him and our homemaking service says that they could not supply a homemaker because there is a woman already in the home.

Q All right. You are saying that the fact that Mrs. Buckingham is already in the house is the reason why you are not giving homemaking service to Mr. Clermont?

A That's right.

Q Now, what rate of pay would you give to the homemaker?

A We would have to evaluate it in terms of how many hours he needs one. See, as I understand it, and correct me if I am wrong, Mr. Clermont, you go to school from 8:30 to 1:30 --

MR. CLERMONT: Right.

A -- and we would evaluate it with our home economist as to how many hours would be needed, and on that basis we would pay for it at the going rate that the New York State

Employment Service pays.

Q All right. Now, to clarify it in my own mind, the Agency will not agree to pay Mrs. Buckingham to be a homemaker in Mr. Clermont's house based on the facts that you received from Jersey, is that correct?

MR. EPSTEIN: That's right.

Q Is there any other evidence on which the Agency bases their determination?

A Well, a part of the information that we got from Jersey indicated that she wasn't too good a homemaker.

Q Now, we are back to the same thing --

MR. NAGLER: I object.

THE REFEREE: Sustained.

Q You are talking about the information that you got from Jersey?

A Right.

Q And, that was the sole basis for the decision, the facts from Jersey, that was the sole basis for the decision not to pay for Mrs. Buckingham as a homemaker?

A Yes.

MR. NAGLER: Are they finished on this point?

THE REFEREE: Right.

Off the record.

CROSS-EXAMINATION of Mrs. Sharon,

BY MR. NAGLER:

Q Mrs. Sharon, in your testimony, you referred to certain items contained in the case record, is that correct?

A In the case record of this case; just your letter.

Q You made no other reference?

A No.

Q Do you have any knowledge as to whether there were any other -- strike that. My letter which you testified from indicated my request on behalf of the client dated April 20, referring to April 17?

A Yes.

Q Do you have any knowledge as to whether or not -- any personal knowledge as to previous requests that were made of the caseworker?

MR. EPSTEIN: I object to the question as not being relevant.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Q I show you a letter, Mrs. Sharon, dated December 19, 1966 to Mr. Raymond Clermont from Mr. J. F. Taylor and ask you to read that letter for the record.

MR. EPSTEIN: I object. Evidently he is going to put this in evidence.

THE REFEREE: Are you planning to put this letter in evidence?

MR. NAGLER: Oh, yes.

MR. EPSTEIN: It's objected to because he is asking for a housekeeper from April 17, 1967, and now he is talking about December, 1966.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record. A letter has been offered in evidence written to Mr. Raymond Clermont from the City of New York Department of Welfare. It is accepted and marked Appellant's Exhibit "A."

(Appellant's Exhibit "A" received and marked into evidence)

THE REFEREE: Proceed.

MR. NAGLER: I have no further questions of Mrs. Sharon just at this point, perhaps I will after some other questions of the other people.

CROSS EXAMINATION of Mr. Ketler:

BY MR. NAGLER:

Q Mr. Ketler, what was the source of your information which you introduced at this hearing?

A Do you mean, the exhibit?

Q The source of your information that you testified to. You testified to a telephone conversation first.

A Right.

Q Who was that telephone conversation held with?

A I believe a Mrs. Barone.

Q Do you know who Mrs. Barone is?

A She is connected with the Hudson County Department of Welfare.

Q Do you have any knowledge as to what office, if any, she holds with the Hudson County Department of Welfare?

A It's on the exhibit.

Q Did you have any authorization from Mrs. Buckingham to obtain such information?

A No.

Q Did you have any authorization from anyone else?

MR. EPSTEIN: I object to the question.

THE REFEREE: Overruled.

A I am sorry, please repeat the question.

Q Did you have any authorization from anyone else?

A I had an authorization to make a long distance call. I didn't need any authorization to investigate.

Q Did you have -- I repeat my question, did you have any authorization from anyone to obtain confidential New Jersey information?

A I don't know how to answer that because I don't need any.

Q Can you tell me what the relevance -- strike that. Who made the underlining on that document?

MRS. PERCIBAL: I did.

MR. NAGLER: You did?

MRS. PERCIBAL: Yes; you mean the red?

MR. NAGLER: Yes, the red underlining.

MRS. PERCIBAL: I did that, and that's understandable.

Q Can you tell me what the relevance of the paternity of the child may be?

MR. EPSTEIN: Object to the question.

THE REFEREE: I will allow,it he has indicated that this is the basis of the homemaker.

A The basis of the child in relation to the homemaker?

Q Mrs. Buckingham as the homemaker.

A Well, we assumed that as Mrs. Buckingham had been presented to us she was a friend and she was also requested as a homemaker. Without our knowledge, she was in the home before the matter was ever brought to our attention.

Q Did you ever see the birth certificate of the child in question?

A No.

Q Did you ever make any attempt to obtain that birth certificate?

A Not yet.

Q Not yet. Now, what does the -- in terms of the paternity of the child, what are the terms used to refer to Mr. Clermont?

MR. EPSTEIN: I object to the question. The document speaks for itself.

THE REFEREE: The document is not here. Let him answer.

A P. F., which stands for putative father.

Q What is the meaning of the term, "Putative Father?"

MR. EPSTEIN: Object to the question. It speaks for itself.

THE REFEREE: Overruled.

A Putative father, as I understand the term, is the alleged father.

Q The alleged father?

A Had an out-of-wedlock child.

Q Then, you would not be aware that the name of the father as it appears on the Birth Certificate is Jesse Denser?

MR. EPSTEIN: I object to the question that there is no knowledge of a name on a birth certificate.

THE REFEREE: This is crossexamination, Mr. Epstein, I will allow it.

A No, I do not know it.

Q Do you have any knowledge as to the accuracy of the facts contained in that document; the document which was just introduced in evidence?

A No.

Q Do you have any knowledge as to who made those entries?

A I assume --

Q I am asking you if you have any knowledge?

A I don't know who typed this, no. I don't know that you signed that.

THE REFEREE: All right, please just answer the questions.

A I have no knowledge of who made those entries.

Q Does any name appear on those records to indicate who made the entries?

A Without the record, I don't know. I believe so, I am not certain.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Q Did you see a notation in those records to the effect that Marion Buckingham had been employed as a domestic?

A That, I honestly don't recall.

Q Was the basis -- what information was the basis for your denying Mrs. Buckingham the right to be employed as a homemaker?

THE REFEREE: He answered that.

MR. NAGLER: No he didn't. He said,"on the basis of the information." I am saying, "Which information?"

A Well, first of all, the final decision was not made by me. Second of all, on the basis of the information that we have, as Mrs. Percibal says, at this time it is being denied on the basis that, first of all, we would -- we are always concerned with the moral atmosphere of children being cared for in a home. Second of all, the qualifications of the person to care for the children.

Q What, in that document, indicated anything about her qualifications, in so far as either of those criteria are concerned?

A Well, first of all, it would appear, according to the document, that Mr. Clermont had a child by her which was raised out of wedlock, which will raise some questions.

Q Let's come back to the "Putative Father" point. Is there any evidence that he is the father?

A To my knowledge --

Q You have already testified that you have never seen the birth certificate.

THE REFEREE: Mr. Nagler, if you are going to answer the question we don't need the witness.

MR. NAGLER: Well, he's supposed to answer this. He's given part of an answer.

MR. KETLER: I'm sorry. Say it again.

Q The basic question,"which information in that document led to your decision", and you answered, "The part of it that he was the father."

A One part was,that he was the father.

Q Can you tell me what relevancy the possibility, unverified, that he may be the father of the child has to do with Mrs. Buckingham's ability as a homemaker?

A Remember Mr. Nagler, that we said that we were denying it, "at this time." This information was only received on Monday. We did not have time between Monday and now to thoroughly investigate -- to authenticate the authenticity of the document.

Q Mr. Ketler, you are denying it nonetheless. What is the basis for your denial?

MR. EPSTEIN: I will submit that he's already answered the question and that the attorney is arguing with the witness.

THE REFEREE: That is correct. The basis for the denial are these documents; that Mr. Clermont is the putative father of the child. And, based on that the Agency has denied the application on behalf of Mrs. Buckingham and said that Mrs. Buckingham cannot become the homemaker.

Is that correct, Mr. Ketler?

MR. KETLER: Yes.

Q My question was, what is the relevancy of this to her qualifications as a homemaker?

A I didn't make the policy. I don't know what goes into all of it. And again, I said I did not make the final decision.

THE REFEREE: Who made the final decision?

MR. KETLER: The final decision was arrived at, to the best of my knowledge, by Mr. Palevsky, the Senior Case Supervisor.

MRS. SHARON: Well, this is policy.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Q Mr. Ketler, is it not a fact, that the decision that Mrs. Marion Buckingham would not be paid as a homemaker and babysitter was made prior to Monday?

A The final decision, no.

Q Did you not, in a discussion with me, conducted approximately --

A 5/18.

Q -- 5/18, thank you. Approximately on May 18, 1967, that you indicated to me that Mrs. Buckingham would probably not be allowed to become a homemaker?

A I indicated that she would probably not, but this would have to be discussed, yes.

Q Do you know how many children Mrs. Buckingham has?

A There seems to be some confusion on this point. I think the worker has seen two children.

MRS. VOLPE: I haven't seen --

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

A To the best of our knowledge, based on information we have received from New Jersey, she has four children.

Q Is there any indication of neglect proceedings ever being instituted against her?

THE REFEREE: That's immaterial.

Let me ask you this, Mr. Ketler. Your information is that Mrs. Buckingham has four children. Would this in any way inflouence the decision as to not to allow Mrs. Buckingham to become the homemaker?

MR. KETLER: Under the present living conditions and the setup of the household at the present time, I would say in a minor way, yes, it certainly is a factor.

Q Did you see an indication in that document that the children were well cared for and healthy?

MR. EPSTEIN: It's irrelevant.

THE REFEREE: Let him answer.

A There may well have been. I don't remember, specifically.

MR. NAGLER: I have no further questions at this point of Mr. Ketler. I would like now to turn to Mrs. Percibal.

CROSSEXAMINATION OF MRS. PERCIBAL:

BY MR. NAGLER:

Q Is Mrs. Buckingham a recipient of public assistance in New York?

A Not to my knowledge.

Q Have you examined the document which was just introduced in evidence from a certain person in the State of New Jersey?

A Yes.

Q Are you the one that made the underlines on them?

A Yes, I am.

Q Did you note the comment that Mrs. Buckingham worked as a domestic?

A I don't remember that.

Q You don't remember that?

A No.

Q If I read to you from the document that Mrs. Buckingham's occupation was a domestic, would that refresh your recollection?

A Well, I am sure it would.

THE REFEREE: Do you know what's in the exhibit?

MRS. PERCIBAL: Well, I don't know it verbatim, but I know what most of the facts are that are in the document.

MR. NAGLER: I might say that I will have further questions when I do have the document.

Q Do you recognize Mr. Clermont's need for a housekeeper?

A That is correct.

Q With Mrs. Buckingham in the home, you say this need does not exist?

A Not at the present time.

Q Is Mrs. Buckingham a recipient of public assistance in the State of New York?

A I think I answered that. I said, "Not to my knowledge." I don't know.

Q Does Mrs. Buckingham have any other source of income, to your knowledge?

A I really don't know. I really don't know. There was one point in the record where she was supposed to be working.

Q If you don't know, then there is no point in saying anything further.

Was the request not made to you, Mrs. Percibal, that although Mrs. Buckingham be added to the budget --

MR. EPSTEIN: I object to the form of the question.

MR. NAGLER: I am questioning --

THE REFEREE: Not to the question, to the form. Off the record.

(Discussion had off the record)

THE REFEREE: On the record. Did you ever suggest that Mrs. Buckingham be added to the budget or make an application for public assistance?

MR. NAGLER: I didn't ask that question.

THE REFEREE: I better let you ask that then.

Q Was the request not made to you that alternative to her being kept as a housekeeper that she be put on the budget?

MR. EPSTEIN: Object to the question.

THE REFEREE: Let's see if she can answer that. Overruled.

Can you answer that?

MRS. PERCIBAL: I think I can answer that because I spoke to Mr. Nagler on the phone. I don't remember the day. And, if I remember correctly, didn't I suggest that Mrs. -- when you talked to me about this, I suggested that Mrs. Buckingham make application for public assistance?

Q Did you not refuse the request that she be added to the budget?

A Well, she has to make an application for public assistance, Mr. Nagler.

Q Isn't it a fact that when a household is maintained that any people in that household, particularly when there is such a relationship, be budgeted together?

A Well, at the time I spoke to you and suggested that she come in and make application for public assistance we were unaware of the fact that there was this close relationship.

Q Under circumstances whereby, if a relationship exists, whereby Mr. Clermont was the father of this child, would it not be customary practice to add these people to the budget?

A If they wanted public assistance. But, remember this. When I talked to you we did not have the material from New Jersey stating that there was a court order for Mr. Clermont to pay for this child; that he was the father.

Q Do you have any knowledge as to whether or not such a court order, in fact, exists; of your own personal knowledge?

A Only what we got from a reputable agency.

Q The answer to that is no?

A   Only from a reputable agency.

THE REFEREE: Mrs. Percibal, has any decision been made -- any investigation been made by the Agency to determine whether or not Mrs. Buckingham should be added to the budget of Mr. Clermont?

MRS. PERCIBAL: No, there hasn't, because up until now we didn't know that she wanted to be.

THE REFEREE: Is it necessary for Mrs. Buckingham to make an application herself to be added to his budget?

MRS. PERCIBAL: Yes, she does have to sign an application blank.

Q   Mrs. Percibal, did you not tell me on the telephone that when a common law relationship exists -- of course, there is no such thing as common law relationship in New York -- what we call a common law relationship, exists, that all parties to the household are added to the one budget without an application as a matter of practice?

A   No. I couldn't have told you that, Mr. Nagler, because it's a matter of policy.

Q   Do you remember my responding because you objected to the fact that they were not sleeping together to be added to the budget?

A Well, I don't rememberyou saying that because I certainly would have had no part in that,because I don't know, I am not in that household. I don't know what is going on there.

Q You don't remember being rather shocked at that time?

THE REFEREE: All right, Mr. Nagler. I think we have covered that enough.

MR. NAGLER: I would like to crossexamine a witness whom Mr. Epstein has not put on. But, an Agency witness; the caseworker.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

EXAMINATION OF MRS. ANTOINETTE VOLPE:

BY MR. NAGLER:

Q Mrs. Volpe, did you not, in fact, make it a point to comment to Mrs. Buckingham on how well the house was kept?

A Yes.

Q Did you know the relationship between Mrs. Buckingham and the children?

A No. They weren't present at the interview when I spoke to her.

Q None of the children were present?

A Just hers.

Q Just hers?

A Yes, just her one child.

Q Did you note any relationship between her and her children?

A I don't understand what you mean, Mr. Nagler.

Q Did you notice whether there was any evidence that the children were not well cared for?

A No, there was just one child.

Q The child was not well cared for?

A No.

MR. NAGLER: No further questions. Now, I would like, on the basis of the documents, which are now in my possession, to ask a few more questions.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

MR. NAGLER: To refresh your recollection --

THE REFEREE: Who are you talking to?

CROSSEXAMINATION OF MRS. ELOISE PERCIBAL:

BY MR. NAGLER:

Q Mrs. Percibal, in the middle of the first paragraph there is a line which states, "Client's --

MRS. PERCIBAL: Do you mind if I look at a copy too?

MR. NAGLER: Sure.

Q -- "Client's occupation is that of a domestic." Why didn't you underline that, Mrs. Percibal?

THE REFEREE: That's immaterial.

Q Let me direct to you the question I previously directed to Mr. Ketler. Can you tell me what the relevancy of the statement, "Putative father of the client's last child, Raymond Clermont," what the relevancy is to the qualifications of Mrs. Buckingham as a homemaker?

A Well, I don't know whether I understand your question completely. But, the relevancy, as I would see it, was that this did establish some kind of a relationship -- you know, for her in the home.

Q My question was -- I will repeat it. Can you tell me what the relationship between the statement about Mr. Clermont being the putative father --

MR. EPSTEIN: Submit the witness --

Q -- has to her qualifications, and I emphasize qualifications, to serve as a homemaker?

A Well, I really don't understand your question.

THE REFEREE: Mrs. Percibal, this document from New Jersey is in evidence and you and your associates have indicated that based on this document the Agency decided that Mrs. Buckingham could not be the homemaker for Mr. Clermont. Now, you have indicated that you underlined the portion of the document which talks about Raymond Clermont being the putative father of Mrs. Buckingham's child, now, does the fact that Mr. Clermont is the putative father have anything to do with the fact that the Agency's decision was not to allow Mrs. Buckingham to become the homemaker?

MRS. PERCIBAL: Well, I can't answer your question because I feel the reason I underlined it was because, to me, this did establish a closer relationship than we were aware of at the time of the request fof Mrs. Buckingham.

THE REFEREE: Now, the fact that there was a closer relationship than you were aware of, did that enter into the Agency's decision as to whether Mrs. Buckingham should or should not be a homemaker for Mr. Clermont?

MRS. PERCIBAL: Well, it entered into it, yes.

Q Why would that be so -- why would the fact that there was a close relationship have anything to do with her being qualified as a homemaker for Mr. Clermont?

A Well, you begin to wonder whether this is one household; one unified household, and whether, because of this relationship, she is giving -- there are services being granted there.

I don't know whether I have answered that correctly.

Q If this is one unified household, Mrs. Percibal, is it not, in fact, the custom of the Department to add persons in that one unified household to the budget?

MR. EPSTEIN: I object. He is going back to where he was before.

THE REFEREE: The question was, are they added to the budget. Now, you have objected. The objection is overruled.

Answer the question.

MRS. PERCIBAL: I thoughtI had answered it.

THE REFEREE: Answer the question, please.

Q Is it the custom to add these people to the budget?

A Yes, if we have proof of this, and, if she applies and signs an application blank.

Q Is it not -- is that not, in fact, untrue, from the standpoint that where there is one unified household that no separate application has to be made?

A No. We have to have her signature on an application blank stating that she wants public assistance.

Q Are you telling me now, if there is one household with children, that you have two applications for one household?

A That's right, and you have separate signatures.

Q Can you tell me the regulation which is the source of your answer?

A It's the Public Welfare Law.

MR. NAGLER: I submit that this is positively and absolutely against Department practice and policy.

THE REFEREE: Now, Mr. Nagler, we are here to gather facts. If you want to submit something as argument about it you may do so. But, not right now.

MR. NAGLER: In addition, I will need the opportunity to present, not only the birth certificate but also the --

THE REFEREE: You may submit a brief. Is that what you want?

MR. NAGLER: -- the specific regulation whereby no separate application is required as a matter of custom and practice.

Q Is it then the position of your Agency, Mrs. Percibal, that you will not pay -- number 1, you will not pay Mrs. Buckingham as a homemaker? Number 2, you will not give her public assistance funds at this time?

A I did not say that, Mr. Nagler.

Q At this time?

A I did not say that.

THE REFEREE: Now, just a minute. It is my understanding that the Agency's contention is that Mrs. Buckingham will not be paid as a homemaker, and, unless she applies for public assistance she will not be included in the budget, and let's leave it at that.

MR. NAGLER: One last question of Mrs. Volpe if I may. Do you have any indication that anyone else is staying in the home caring for the children and anything else?

MRS. VOLPE: No.

MR. NAGLER: No further questions.

THE REFEREE: All right. I think we can put that issue aside now and go on to the issue of --

MR. EPSTEIN: I ask, does Mr. Nagler intend putting Mr. Clermont on the stand on this issue?

THE REFEREE: Oh, I am sorry. Actually, you are right.

Mr. Nagler, do you have anything -- you may present your case now.

MR. NAGLER: Before I do, I have one more question of Mrs. Percibal.

Q Mrs. Percibal, is it not a fact that Mr. Clermont is Mrs. Buckingham's only source of support at this time?

A Well, the only --

Q Yes or no.

A The only thing I --

THE REFEREE: You can answer it any way you want.

A The only thing I know, Mr. Nagler, is that we learned from Hudson County that Mrs. Buckingham's case was closed effective May 1.

Q Did you not, in fact, receive indications from me that Mrs. Buckingham was eligible for public assistance or that she should receive the pay of a homemaker?

A Well, you did discuss that with me and I did suggest to you that Mrs. Buckingham make application and we would be very happy to investigate it and give whatever assistance was necessary.

Q Then you have received indications --

THE REFEREE: All right, she has answered it.

Q -- that she has no other source of income?

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Now, Mr. Nagler, will you present your case on this point please?

RAYMOND CLERMONT, called as a witness in his own behalf, testified as follows:

BY MR. NAGLER:

Q Mr. Clermont, who keeps house for you?

A Mrs. Buckingham.

Q How many children does Mrs. Buckingham have?

A Two.

THE REFEREE: You will have to speak up.

Q How many children does she have all-told?

A Four.

Q How many children are presently living with her?

A Two

Q Where is she living?

A In my home.

Q Is there anyone else keeping house for you?

A No.

Q What are you presently engaged in; what are your present activities or occupation or otherwise?

A I am in school.

Q Where?

A In the RCA Institute.

Q When did you start?

A Yesterday.

Q Before that, have you recently been employed?

A Yes.

Q When was that?

A In -- the last time was April 30; two months, I worked two months.

Q Who was caring for your house from April 17 to April 30?

A April 17? She did.

THE REFEREE: Who is, "She?"

MR. CLERMONT: Mrs. Buckingham.

Q How do your children react to Mrs. Buckingham in the home?

A They love her.

Q Have you ever observed her tell them to do anything?

THE REFEREE: All right now, I don't think there is any need to go into that. There is no contention by the Agency that she is not a good housekeeper.

MR. NAGLER: I will stipulate to that, except that there are indications.

THE REFEREE: No, the Agency has said the only reason they didn't approve Mrs. Buckingham was because of this report from the Hudson County Welfare Department.

MR. NAGLER: One thing underlined in that report is not very credible; a little item on the first page, which I would rather not allude to because I give it no weight.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Q Are you familiar with Mrs. Buckingham's youngest child?

A Yes.

Q Approximately how old is the child?

A (None)

Q The youngest child?

A I never asked that. Approximately, I don't know.

Q THE REFEREE: You will have to speak up Mr. Clermont, we can't hear you.

Q Can you estimate how old the child is?

A About ten months.

Q Have you ever seen the child's birth certificate?

A Yes.

Q Who showed it to you?

A The mother.

Q That's Mrs. Buckingham?

A Mrs. Buckingham.

Q Is there a father named in the birth certificate?

A Yes.

Q Who is that father?

A Mr. Jesse Densen.

Q Was there ever a court order entered against you for the payment of support for this child?

A No.

MR. NAGLER: No further questions on this issue.

THE REFEREE: Mr. Epstein?

MR. NAGLER: No further witnesses on this issue.

CROSSEXAMINATION OF MR. CLERMONT:

BY MR. EPSTEIN:

Q Mr. Clermont, when did you first meet Mrs. Buckingham?

MR. NAGLER: Objection; irrelevant.

THE REFEREE: No, no. Answer that please?

A I cannot remember exactly,the date.

THE REFEREE: About how long ago?

MR. CLERMONT: About ten months.

MR. EPSTEIN: Excuse me?

THE REFEREE: About ten months, he said.

Q Where did you meet her?

MR. NAGLER: Object to that as irrelevant.

THE REFEREE: Overruled.

Mr. Clermont, the question was where did you meet Mrs. Buckingham, do you remember?

MR. CLERMONT: I really don't remember.

MR. EPSTEIN: You met her ten months ago and you don't remember where you met her?

THE REFEREE: That's what he said, Mr. Epstein.

Q And, when did you enter into an agreement with her that she would be your housekeeper?

A Because she's a friend of Mr. Nagler's.

Q Did Mr. Nagler introduce her to you?

A Yes.

Q Have you ever made any payments for the support of Mrs. Buckingham's youngest child?

A No.

Q Can you account for any reason for the statement being made in Mrs. Buckingham's public assistance case in New Jersey in which it states --

THE REFEREE: I will sustain that objection.

MR. NAGLER: Thank you.

Q Now, would you describe the relationship that exists between you and Mrs. Buckingham at the present time?

A Now?

Q Yes.

A She's the housekeeper.

Q That's all she is is the housekeeper?

A Yes.

Q When did you first meet Mr. Nagler?

A Oh, about a year ago.

Q And, Mr. Nagler introduced you to Mrs. Buckingham?

THE REFEREE: The answer is yes.

MR. NAGLER: I would like to indicate that they were at the same meeting.

THE REFEREE: Perhaps we can facilitate matters.

Mr. Nagler, did you, in fact, introduce Mrs. Buckingham to Mr. Clermont?

MR. NAGLER: I don't remember specifically. But, they were at the same meeting and I think they met at this meeting.

THE REFEREE: Where and when was this meeting?

MR. NAGLER: Approximately ten, 11, 12 months ago, I don't remember the time.

THE REFEREE: Where was that meeting? What kind of a meeting was this?

MR. NAGLER: It was in the Bronx, at a Welfare Group.

MR. EPSTEIN: Do you remember this meeting?

MR. NAGLER: Am I the witness?

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

MR. EPSTEIN: I have nothing further.

THE REFEREE: Seeing as we have no further evidence on this point we can go on to the next, is that correct, gentlemen?

MR. NAGLER: Nothing further on this point.

MR. EPSTEIN: Nothing further.

THE REFEREE: Now, on the question of reimbursement for carfare expended during January and February of 1967. Mr. Epstein, a demand was made for this in the original letter requesting a fair hearing. Do you have anything to say on this?

MR. NAGLER: Excuse me, before you do, Mr. Epstein, I see the time is approximately ten minutes to 5 and we are obviously not going to be able to finish today.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Mr. Epstein, what do you have on this point?

MR. EPSTEIN: No evidence on this point.

THE REFEREE: Mrs. Sharon, do your records indicate that a request was made for carfare --

MRS. SHARON: Yes.

MRS. MABEL SHARON RECALLED:

BY THE REFEREE:

Q -- that Mr. Clermont expended during January and February of 1967?

A No. There was only one item that I recall, one incident, when he was offered carfare; when an issue had been raised, and he refused it when it was offered to him.

Q Do your records indicate that Mr. Clermont was requested to come to the Welfare Center during January and February, a number of times?

A Yes.

Q Approximately, how many times?

A I don't know, I would have to go through the record to count them.

Q Are there more than ten?

A I don't know.

Q Now, your records indicate that he was offered carfare at one point?

A He was offered, and he refused it.

Q At what point?

MR. NAGLER: I have an objection to the witness examining any portion of the case record that I have not had a chance to examine.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Mr. Clermont, approximately how many trips to the welfare center did you make during the months of January and February, 1967, approximately, to the best of your recollection?

MR. CLERMONT: I would have to look at my records, but --

MR. NAGLER: At this point, if I may interrupt my own witness, I would like to indicate that a request for documents beneficial to the client's case the client wished to put on today was duly made to the Commissioner as suggested by the form submitted by the State Department of Social Welfare. A copy of that letter was sent to the Office of Council. No such records have been forthcoming from the Department, no opportunity, although the issues were known perfectly well to the Department as of March 9, 1967, when the fair hearing was requested. No opportunity was furthered as yet to the appellant to examine the case record to determine what might be beneficial to the client. And, in all fairness, this is an adversary proceeding.

THE REFEREE: What are you asking for? At this point you are making a comment that you asked for it and I know you have made it.

MR. NAGLER: I would like to offer the letter in evidence.

THE REFEREE: You don't have to, I have it. Now, it's been conceded that you --

MR. NAGLER: Motion that the agency be compelled to furnish us with the case record for the purpose of ascertaining how many trips Mr. Clermont was asked to make to the Welfare Center.

THE REFEREE: Just a minute.

Do you have the case records for January and February of 1967, Mrs. Sharon?

MRS. SHARON: Yes.

THE REFEREE: May I see them please?

All right. The case record indicated that between January and February approximately seven office visits were made by Mr. Clermont to the welfare center.

MR. RAYMOND CLERMONT RECALLED:

BY THE REFEREE:

Q Mr. Clermont, what is your recollection of the number of visits that you made during January and February?

A I made about ten, or more than ten. I would have to see because I think --

Q Would you say it was more then 20?

A No, it wasn't.

Q So, it was something between ten and 20 visits?

A Between ten and 20.

Q And, as a result of this, you came by public transportation, did you?

A Yes.

Q During this period you were receiving public assistance, is that correct?

A In that period I was supposed to receive, but I did not receive.

Q Now, as a result of this money, you spent, your own money then, to pay for this?

A Yes.

Q As a result of this, do you have any outstanding debtz today from money that you borrowed for this purpose?

A I don't know what you mean.

Q Do you have any debts from any money that you borrowed, that you used for this transportation?

A I borrowed money from friends and I had money then. I did not borrow every day.

Q From whom did you borrow money?

A From Carmine Thomas --

MR. NAGLER: Are you saying, when you had to go down to the welfare center you might borrow 40 cents to go down there?

MR. CLERMONT: Yes.

Q Do you still owe this money to anybody?

A No

THE REFEREE: I have no fuher questions.

EXAMINATION OF MR. CLERMONT:

BY MR. NAGLER:

Q Did you ever make a request that the money for carfare be given to you?

A Yes.

Q Now, the Agency states, in a cryptic one-line sentence --

MR. EPSTEIN: Object to the question.

THE REFEREE: All right. I don't know what the question is.

Q -- that Mr. Clermont refused -- how many times was carfare offered to you that you refused?

A One time.

Q Kindly describe the circumstances.

A At that time I received three telegrams from Mr. Teller to come from back and forth to receive money and I never received money and finally I say, what 40 cents can do me? I spend -- I come -- I did not have no houseckeeper and I sit there, I have been hold there from 9 o'clock to 5 o'clock and I don't receive nothing. And, I have to go. I don't, every day. Now, the day they offered it to me, but I don't need 40 cents, I did not come here for 40 cents. I come for more than that.

THE REFEREE: Mr. Clermont, how much did it cost you each time you went?

MR. CLERMONT: 40 cents.

THE REFEREE: 40 cents a day?

MR. CLERMONT: 40 cents.

THE REFEREE: All right. Anything further, Mr. Nagler, on that?

MR. NAGLER: Yes, I have a couple of questions of Miss Garby.

HELEN GARBY, called as a witness on behalf of the appellant testified as follows:

BY MR. NAGLER:

Q Miss Garby --

MR. EPSTEIN: Wait a minute, I would like Miss Garby identified.

THE REFEREE: Will you identify Miss Garby?

Q Miss Garby, will you identify yourself?

A I am a caseworker with the Non-Residence Welfare

Center since January of this year, and I was working in the unit that was previously handling Mr. Clermont's case because I spoke french. I was asked to handle the case several times by the Case Supervisor, Mr. Taylor.

Q Did Mr. Clermont ever indicate to you that he had requested carfare?

MR. EPSTEIN: Object to the question.

THE REFEREE: Overruled.

A The first time I spoke to Mr. Clermont I offered him carfare at the end. He was very surprised and he hadn't gotten carfare in the past and he didn't know about the procedure.

THE REFEREE: When was that, Miss Garby?

MISS GARBY: Well, I don't know. I imagine it was in the case record.

MR. NAGLER: This is exactly what I am talking about, as to beneficial entries never being shown to us.

MISS GARBY: In the beginning of January or February I -- end of January or beginning of February, I guess.

THE REFEREE: All right.

A Another time, Mr. Clermont was supposed to come in and he said he couldn't because he didn't have the 40 cents.

This was during the time that he was officially receiving assistance, I think. But, his checks had been sent to the wrong address and he hadn't received them and they were held when he came down to the office for them.

Q Do you remember the date on which this took place?

A That period, the beginning of February. I don't remember the exact date.

Q If you had an opportunity to examine the case record would that refresh your recollection?

A I could probably figure that out, yes.

MR. NAGLER: I once again make a motion to see the case record.

THE REFEREE: Do you have any objection?

MR. EPSTEIN: As to this particular -- as to her particular entry, just for the purpose of what date she spoke to him?

THE REFEREE: Well, it's difficult to take that out.

MRS. SHARON: I know where it is, I saw it.

MR. NAGLER: And the issue involves all of January and February.

THE REFEREE: I think we are going too far afield now. The Agency has not contested -- not said that he didn't make these visits, and there seems to be no doubt that the money was only offered one time. I don't think it behooves us to go into this any further. That's enough on this point now. I am not going to allow any more testimony on this point.

MR. NAGLER: But, I would like to introduce that particular citation that was almost alluded to, January 21, I believe.

THE REFEREE: That she offered him --

MR. NAGLER: There is something in the case record that indicates not that she offered him --

THE REFEREE: All right. We will concede the fact that she offered it.

MRS. SHARON: No.

THE REFEREE: That she discussed it with him. Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

The request to examine the case record to find some things that may be beneficial with respect to carfare is denied. If you have a specific item that you want to talk about we will discuss it in reviewing the case record. I am reading an entry from Helen Garby which does not indicate anything about carfare one way or the other.

MISS GARBY: I don't think it would be in the case record. It was just indicating the dates.

MR. NAGLER: I wish to specify my exception to that in view of the fact that the due demand was made.

THE REFEREE: All right, we have that. You have made your objection.

MR. NAGLER: The basis for my exception is, first --

THE REFEREE: Now, you have made your objection. I have made my ruling. If you have anything further, any law that you want to put in, you can submit a brief. There is no need for that on the record.

MR. NAGLER: I just want to state the grounds for my objection.

THE REFEREE: At this point, my ruling is made on your objection. Now, do you have anything else that you want to put in on reimbursement of carfare?

MR. NAGLER: Nothing.

THE REFEREE: Now, as to the reimbursement of attorney's fees, I will ask Mr. Nagler to proceed on that first as this is an issue that hasn't been brought up before.

MR. EPSTEIN: Of course, the Department will, at this time, offer no proof as to the request. The Department may want to submit a brief. But, just specifically on this particular point.

THE REFEREE: All right. Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

Mr. Nagler, will you proceed?

MR. NAGLER: Mr. Kourakos represented. Mr. Kourakos is a member of the Bar of the State of New York.

MR. EPSTEIN: What is his full name? What is his address, I would like to know.

MR. NAGLER: The office is as 165 Broadway. The office is Harry T. Sherman. The attorney is a man named K-o-u-r-a-k-o-s, first name, Hippocrates.

Mr. Kourakos initially represented --

MR. EPSTEIN: Wait a minute, I want a copy of this too.

MR. NAGLER: Initially, he represented Mr. Clermont in a divorce proceeding which Mr. Clermont brought against his wife. He was, therefore, familiar with the facts involving the Clermont family. The fee in that proceeding, I believe, was $300.-- $350.

Subsequently, approximately a month and a half ago, I am not certain about the dates, Mrs. Clermont brought custody proceedings by way of Habeas Corpus against Mr. Clermont for the custody of their five children.

Mrs. Clermont was represented by the Legal Aid Society. The Legal Aid Society, I understand, refused to represent Mr. Clermont because of conflict between the clients, the Legal Aid Society being a corporate institution allowed to practice law. No other free facility was available to Mr. Clermont to obtain an attorney.

Mr. Clermont, therefore, went to the attorney most familiar with the marital portion of his case already, and asked him to represent. The attorney subsequently informed him that there would be a fee on this as well and it would not be part of the other fee. This, I believe, happened after the representation occured.

THE REFEREE: How much was the fee?

MR. NAGLER: $350.

THE REFEREE: Has this amount been paid?

MR. NAGLER: No, it has not.

THE REFEREE: Mr. Clermont, you have heard what your attorney has said, is this substantially correct?

MR. CLERMONT: Yes.

MR. EPSTEIN: Mr. Clermont, when you appeared in court at this time did you ever notify the court that you were without funds to retain an attorney?

MR. CLERMONT: What did you say?

MR. EPSTEIN: This is a family court, did you say?

MR. NAGLER: Supreme Court, a Habeas Corpus proceeding.

MR. EPSTEIN: Did you ask the Court to supply you with a lawyer?

MR. NAGLER: I object to that. I think the Hearing Officer can take Judicial Notice that the Supreme Court does not supply a lawyer.

THE REFEREE: When you went before the judge, did you ever tell the judge that you couldn't afford a lawyer?

MR. CLERMONT: No.

THE REFEREE: Did you hire this lawyer before you went to court?

MR. CLERMONT: He was my lawyer before.

THE REFEREE: Did you talk to him before you went to court this time? You were served with a paper, the Habeas Corpus paper, did you see him first or did you go to court first?

MR. CLERMONT: I had the lawyer first.

THE REFEREE: Anything else you want to ask? Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

MR. EPSTEIN: I offer, of course, no evidence. That's all of Mr. Clermont.

THE REFEREE: The Agency has indicated that since they were not aware of this issue that has been raised they request an opportunity to submit their evidence at a later date on this point.

MR. NAGLER: I wish to put one question to the Agency.

Mr. Epstein is a member of the Legal Bureau.

Had Mr. Clermont requested the Welfare Department to furnish a lawyer, would the Welfare Department furnish a lawyer to defend him?

MR. EPSTEIN: I am not sure. I don't handle this type of proceeding. I could not give a definitive answer. In my opinion we would not furnish an attorney, but that's solely my opinion.

THE REFEREE: All right, that takes care of that point. Now, the last point is the loss of money to the appellant as the result of the alleged violation of confidentiality of the appellant's records.

MR. NAGLER: That is connected very closely with the last issue, and, that will come out.

THE REFEREE: Off the record.

(Discussion had off the record)

THE REFEREE: On the record.

MR. NAGLER: On examining my case record, which is official for my purposes but not for the Department's, I found that on one of the many visits made by Mr. Clermont to the Welfare Center he was detained there by a Unit Supervisor by name of --

MR. EPSTEIN: Object to the question. It refers to the Case Supervisor not to the fair hearing.

THE REFEREE: Well, this is referring to the fair hearing. I would like to find out how that came about.

MR. EPSTEIN: If you want to. But, there is still an objection.

MR. NAGLER: While he was held at the welfare center the caseworker, whose name my records do not indicate, was sent to his home to examine into the care of the children; the presence of the children in his home and so on.

THE REFEREE: When was this, Mr. Nagler?

MR. EPSTEIN: I object now. I will object to the whole procedure. I will object to the whole procedure and I will request that Mr. Clermont testify.

THE REFEREE: Yes, I want to hear what he has to say. And, I will decide whether to admit it or not.

MR. NAGLER: Well, partly as a result of this procedure and partly of a matter of which I have no knowledge, information was given by that Unit Supervisor to the wife of the client. At the same time the client was advised to go to the Legal Aid Society information was furnished to the Legal Aid Society on which a custody -- on the basis of which a custody proceeding was brought.

THE REFEREE: Are you saying that as a result of this, in the custody proceeding there was a monetary loss to Mr. Clermont?

MR. NAGLER: There was the expense of a lawyer, the loss of additional jobs which he couldn't get until later --

THE REFEREE: No, I think it's too remote, Mr. Nagler. I think it's too remote.

MR. NAGLER: Excuse me, but he did lose time from his job.

THE REFEREE: Now, I don't think the alleged violation of the record and the loss from his job or because he had to pay a lawyer for the custody proceeding, I don't think the connection is enough to make it subject to a fair hearing by coming under any of the items set forth in our regulations which govern the fair hearing procedure.

MR. NAGLER: There is a more specific damage in the invasion of privacy.

THE REFEREE: That too is not subject to a fair hearing.

MR. NAGLER: I have an exception.

THE REFEREE: All right. Is there any other evidence to be offered on any of the other points?

There being no other evidence this hearing is adjourned.

* * *

THE REFEREE: On the record. Mr. Nagler has expressed a desire to see the minutes of this hearing, at which time he will then determine whether or not to submit a brief. If you so decide to submit a brief you will have two weeks from the date you receive the minutes to submit that brief, a copy of which you will serve upon the Agency, to Mr. Epstein's attention, and Mr. Epstein will have an additional two weeks to supply a brief if he wishes to.

MR. NAGLER: Let me also add that most specifically, this is a confidential proceeding as everyone is aware and that any matter coming out in this proceeding is confidential, to be discussed with no one.

THE REFEREE: I think the Agency is well aware of that fact and there is no need to go into that.

In addition, to make it clear, I will accept anything, before or after you get the minutes.

This hearing is adjourned.

* * *

CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT OF MINUTESTAKEN AT THIS
FAIR HEARING.

Gerald C. Kaye

Gerald C. Kaye, Hearing Reporter.

C 73— Judicial Subpoena; with Witness' Stipulation
to remain subject to call. Blank Court. 9-63

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

DEPARTMENT OF SOCIAL SERVICES
STATE OF NEW YORK

In The Matter Of Appeal of
RAYMOND CLERMONT

~~*Plaintiff*~~

xxxxx ~~*against*~~

~~*Defendant*~~xxx

Index No.

Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO "MARY " HAMMERSCHLAG, Director Queens Social Services Center, Dept. S.S.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* The above entitled Agency, at 117 Liberty Street, N.Y.,N.Y.

on the 10th *day of* January *19*68 *at* 1:30 *o'clock, in the* after *noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Appellant

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Robert Keyes ~~*one of the*~~ Supervisor of Referees
~~*said Court*~~ *at* 117 Liberty St., N.Y., N.Y. *the* 8th *day of* January *19* 68

Stephen M. Nagler

Stephen M. Nagler

Attorney(s) for Appellant

Office and Post Office Address

Room 1030 - 150 Nassau Street
New York, New York 10038

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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DEPARTMENT OF SOCIAL SERVICES
STATE OF NEW YORK

In The Matter Of Appeal of

RAYMOND CLERMONT ~~Plaintiff~~

~~against~~

~~Defendant~~

Index No.

Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO "JOHN" WECHSLER, Asst. Director, Queens Social Services Center, Dept. S.S.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* The Above Entitled Agency, at 117 Liberty Street, N.Y., N.Y.

on the 10th *day of* January *19*68 *at* 1:30 *o'clock, in the* afternoon, *and at any recessed or adjourned date to give testimony in this action on the part of the* Appellant

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Robert Keyes Supervisor of Referees ~~*one of the*~~ ~~*of said Court,*~~ *at* 117 Liberty St., N.Y.N.Y. *the* 8th *day of* January *19*68

Stephen M. Nagler

Stephen M. Nagler

Attorney(s) for Appellant

Office and Post Office Address

Room 1030 - 150 Nassau Street
New York, New York 10038

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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DEPARTMENT OF SOCIAL SERVICES
STATE OF NEW YORK

IN THE MATTER OF APPEAL OF

RAYMOND CLERMONT ~~Plaintiff~~
~~against~~

~~Defendant~~

Index No.
Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO FRIEDA LACK, Asst. Deputy Director, Bureau Public Assist.
Dept. Sosical Service, City of New York *GREETING:*

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* The above entitled Agency, at 117 Liberty Street, N.Y.,N.Y.

on the 10th *day of* January 1968 *at* 1:30 *o'clock, in the* after*noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Appellant

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Robert Keyes *one of the* Supervisor of Referees
~~*of said Court, at*~~ 117 Liberty St.,N.Y. N.Y. *the* 8th *day of* January 1968

Stephen M. Nagler

Stephen M. Nagler
Attorney(s) for Appellant
Office and Post Office Address
Room 1030
150 Nassau Street, N.Y.,N.Y. 10038

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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DEPARTMENT OF SOCIAL SERVICES
STATE OF NEW YORK

In The Matter of Appeal of RAYMOND CLERMONT ~~Plaintiff~~ ~~against~~ ~~Defendant~~	*Index No.* *Calendar No.* *JUDICIAL SUBPOENA*

The People of the State of New York

TO "JOHN" Curatola, Housing Advisor, Queen S.S. Center, Dept. of S.S., City N.Y.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* The Above Entitled Agency, at 117 Liberty Street, N.Y., N.Y.

on the 10th *day of* January *19* 68 *at* 1:30 *o'clock, in the* after*noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Appellant

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Robert Keyes Supervisor of Referees ~~of said Court~~, *at* 117 Liberty St., N.Y., N.Y. *the* 8th *day of* January *19* 68

Stephen M. Nagler

Stephen M. Nagler
Attorney(s) for Appellant
Office and Post Office Address
Room 1030- 150 Nassau Street
New York, New York 10038

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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DEPARTMENT OF SOCIAL SERVICES
STATE OF NEW YORK

In The Matter of Appeal of
RAYMOND CLERMONT

~~Plaintiff~~

~~against~~

~~Defendant~~

Index No.

Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO "JOHN"Intodonato, Sr. Case Supervisor, Queens S.S.Center, Dept. S.S.City N.Y.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* The Above Entitled Agency, at 117 Liberty Street, N.Y., N.Y.

on the 10th *day of* January *19* 68 *at* 1:30 *o'clock, in the* after *noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Appellant

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Robert Keyes Supervisor of Referees *one of the* ~~of said Court~~, *at* 117 Liberty St., N.Y., N.Y. *the* 8th *day of* January *19* 68

Stephen M. Nagler

Stephen M. Nagler

Attorney(s) for Appellant

Office and Post Office Address

Room 1030 - 150 Nassau Street
New York, New York 10038

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : SPECIAL TERM, PART I

- x

RAYMOND CLERMONT, :

Petitioner, :

-against- : NOTICE OF PETITION

GEORGE K. WYMAN, individually and as Commissioner of the Department of Social Services of the State of New York, :

INDEX #3213/68

Respondent. :

- x

PLEASE TAKE NOTICE that upon the annexed petition of RAYMOND CLERMONT verified the 26th day of February, 1968, the undersigned, pursuant to Article 78 CPLR, will move this Court at Special Term, Part I, thereof, to be held in and for the County of New York, at the courthouse at 60 Centre Street, in the City of New York, New York, on March 20th, 1968, at 9:30 a. m. or as soon thereafter as counsel can be heard, for an order revising, annulling and setting aside the determination of George K. Wyman, Commissioner, Department of Social Services of the State of New York, by Decision After Hearing, denying to petitioner:

(1) A grant of forty ($40.00) dollars per week in his budget under the Aid to Dependent Children Program for housekeeping services, and

(2) A special grant to cover a debt incurred for an attorney's fee while petitioner was receiving Aid to Dependent Children.

The Decision After Hearing containing these determinations was rendered on October 27th, 1967. Petitioner desires that the said decision and action may be reviewed and corrected on the merits by this Court, and any error committed in denying said grants may be corrected according to law, on the ground that said determination was arbitrary and capricious, affected by an error of law, and was an abuse of discretion, and for such other and further relief the Court may deem proper and just.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to SS7804(c) CPLR, you are required to serve a verified answer at least five days prior to the return day, annexing thereto the certified transcript of the record of the proceedings subject to this review, and any and all affidavits to be used herein.

Dated: New York, New York.
February 26, 1968.

Yours, etc.,

CARL RACHLIN
STEPHEN M. NAGLER
Attorneys for Petitioner
Office and P. O. Address
164 Madison Avenue
New York, N. Y. 10016
532-8216

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : SPECIAL TERM, PART I

- x

RAYMOND CLERMONT, :

Petitioner, :

-against- :

GEORGE K. WYMAN, individually and as :
Commissioner of the Department of Social
Services of the State of New York, :

Respondent. :

- x

I, RAYMOND CLERMONT, Petitioner herein, respectfully allege:

1. I am a recipient of public assistance under the Aid to Dependent Children Program administered by the Department of Social Services of the City of New York under regulations approved by and under the supervision of the Department of Social Services of the State of New York.

2. The Respondent in this proceeding is Commissioner of Social Services of the State of New York. He is charged with the responsibility of administering the Aid to Dependent Children Program in the State of New York, and as such with the responsibility of deciding appeals from determinations by local Social Service Agencies, (including the Department of Social Services of the City of New York) as to the adequacy of grants of aid to dependent children. .

3. Pursuant to the regulations of the Department of Social Services of the State of New York (18NYCRR § 356.1 et seq) and the Social Services Law of the State of New York (§ 353), I demanded an appeal and fair hearing to review the arbitrary and capricious refusal of the agents and employees of the

City of New York, hereinafter referred to as the "local agency," to grant certain items of assistance authorized by State and local regulations. These items of need insofar as they are pertinent hereto were as follows:

(a) A grant of $40.00 per week to pay for a homemaker to care for my four children who reside with me and to perform housekeeping services so that I may attend school pursuant to a course of training previously approved in my case by the local agency and by the Department of Social Services of the State of New York under § 350(1)(c) of the Social Services Law. A grant for housekeeping services is specifically authorized in such circumstances by regulations of the respondent (18NYCRR § 352.5(g)(1).

(b) A special grant for an attorney's fee of one hundred and fifty ($150) dollars, incurred as a result of a habeus corpus proceeding. The proceeding was brought by my former wife to contest custody of our five children previously awarded to me at the close of a divorce proceeding. Since my wife was represented by the Legal Aid Society, and since my efforts to obtain free legal counsel in this matter were fruitless, I was compelled to retain counsel at the aforementioned fee, which I still owe. I further contended that the habeus corpus proceeding was instigated by an employee of the local agency who made certain allegations to my former wife in violation of the privilege of confidentiality accorded my case-record by § 136 of the Social Services Law.

Other issues were raised in my appeal to the respondent but these are not pertinent to this proceeding.

4. On the 24th day of May, 1967 a "fair hearing" was held before Gerald Duckor, a referee designated by the respondent to take evidence in the appeal. The minutes of the hearing are annexed hereto as Exhibit 1.

5. On October 27th, 1967, the respondent decided the appeal. A copy of the "Decision After Hearing" is annexed hereto as Exhibit 2 and made a part hereof.

In his decision the respondent:

(a) Arbitrarily and capriciously and in abuse of discretion affirmed the decision of the local agency in refusing to include a grant of forty ($40.00) dollars per week in my budget for the purpose of hiring Marion Buckingham as a housekeeper.

(b) Due to an erroneous interpretation of the law, refused to order the local agency to issue a grant for an attorney's fee.

6. Such decision was arbitrary and capricious and an abuse of discretion as alleged in paragraph 5(a) above in that it was contrary to the facts as proven at the hearing as found in the "Decision After Hearing" in that:

(a) It was proved at the hearing by uncontradicted evidence that I had entered into a contract with Marion Buckingham whereby she would receive from me forty ($40.00) dollars per week as a salary as a sleep-in housekeeper on or about April 17, 1967 (See Exhibit 2 at page 2, paragraph 8).

(b) From April 17th to April 30th, 1967, when I was employed full-time and from May 23rd, 1967 onward, when I was attending school and in need of and entitled to housekeeping services pursuant to 18NYCRR § 352.5(g)(1), and such facts were uncontested at the hearing (See Exhibit 2, page 2, paragraphs 9 and 10).

(c) The sole reason for the refusal of the local agency to include a grant for the payment of Mrs. Buckingham as a housekeeper was her alleged unsuitability (Exhibit 2, page 3, paragraph 11) and that such reason was "improper." In his "Decision After Hearing" respondent states:

> "The appellant is in need of a housekeeper during the hours he is in school, to wit, 8:30 a. m. to 1:30 p. m. and the agency has indicated willingness to supply a grant for a housekeeper for this period.
>
> "The agency's refusal to allow appellant to hire Mrs. Buckingham as a housekeeper...is improper," (Exhibit 2, page 3, paragraph 13).

(d) In view of these facts and findings by the respondent, the finding by the respondent that:

> "She (Mrs. Buckingham) is in fact performing housekeeping functions for appellant at no charge and, therefore...no grant is presently required."

is arbitrary and capricious and without foundation in fact or law, when in fact and law I am indebted to Mrs. Buckingham for her services at the agreed rate of forty ($40.00) dollars per week.

7. Such decision was based on an error of law and an abuse of discretion in that it denied me a special grant for the payment of a current debt incurred while I was receiving public assistance as a result of essential and necessary legal services required for the preservation of my family.

The following facts were uncontested at the aforementioned hearing:

(a) I was a respondent in an action brought by my former wife by writ of habeas corpus in April, 1967, to obtain the custody of our 5 children (Exhibit 1, page 64) vested in me by a previous divorce decree.

(b) In the divorce proceeding, I was represented by Mr. Hippocrates Kourakos, Esq.

(c) In the habeas corpus proceeding, my former wife was represented by the Legal Aid Society, and no other free legal service was available to me (Exhibit 1, page 64, 66, 67).

(d) Having no other course available, I returned to Mr. Kourakos who agreed to represent me for a fee of one-hundred and fifty ($150.00) dollars, which sum is still due and owing to Mr. Kourakos.

(e) The habeas corpus proceeding was substantially based on information given to my former wife and her attorney by an employee of the local agency (Exhibit 1, pages 68, 69) in violation of my privilege of confidentiality under § 136 of the Social Services Law.

There having been no other recourse available to me in defending the interests of and preserving my family, a special grant for legal services should have been authorized pursuant to 18NYCRR§§352.5(n) and (q), Section 131(2) of the Social Services Law, and Section 3401 of the Federal Handbook of Public Assistance Administration, IV.

8. No previous application for the same or similar relief has been made.

WHEREFORE, I respectfully ask that an order be granted herein, revising, annulling, and setting aside the determination sought to be reviewed, and for such other and further relief the Court may deem just and proper.

Carl Rachlin, Esq.
Stephen M. Nagler, Esq.
Attorneys for Petitioner
164 Madison Avenue,
New York, New York 10016
532-8216

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

RAYMOND CLERMONT, being duly sworn, says: I am the plaintiff herein. I have read the annexed petition and know the same to be true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Raymond Clermont

Sworn to before me this
6th day of February, 1968.

Milton Spiro

MILTON SPIRO
Notary Public, State of New York
No. 24-9131270
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1968

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of :

RAYMOND CLERMONT :

from determinations by the New York City Department of Social Services (formerly known as the New York City Department of Welfare) relating to the adequacy of a grant of Aid to Dependent Children. :

DECISION
AFTER
HEARING

The above named, Raymond Clermont, hereinafter referred to as the appellant, having appealed from determinations by the New York City Department of Social Services, hereinafter referred to as the agency, relating to the adequacy of a grant of Aid to Dependent Children, and a hearing having been held at the New York State Department of Social Services located at 270 Broadway, New York, New York, on the 24th day of May, 1967 before S. Gerald Duckor, Esq., Referee; and the appellant, Raymond Clermont, having appeared in person, represented by Stephen Nagler, Esq.; and the agency having appeared by Mable Sharon, Fair Hearing Representative and Marvin Epstein, Esq.; and Eleanor Blakely, Senior Welfare Representative of the New York State Department of Social Services also having been present; and an opportunity to be heard having been accorded all interested parties herein and the evidence having been taken, the record read and due deliberation having been had, it is hereby found:

1) The appellant, Raymond Clermont, 39 years of age, is married and resides at 97-64 Corona Avenue, Queens, with his four children, the eldest being 13 years of age and the youngest being 8 years of age.

2) The following matters were considered at the hearing:

(a) Appellant's demand for a grant of $40.00 per week to be included in his budget for the purpose of hiring one Mary Buckingham as a housekeeper.

(b) Appellant's demand that he be reimbursed for carfare expended by him to travel to the Welfare Center during January and February, 1967.

(c) Appellant's demand that a special grant be issued to him to cover an expense he has incurred for an attorney's fee.

(d) Appellant's complaint that the agency violated the confidentiality of his case record and thereby caused him pecuniary loss.

(e) Alleged wrongful discontinuance of assistance in February, 1967.

3) With respect to item (e), assistance was restored in March 1967, and it appears that a special grant was issued to appellant to cover his needs for the period during which assistance was suspended. The question of whether the original suspension was proper will therefore not be considered herein.

4) Appellant's claim with respect to item (d) is that an agency employee wrongfully disclosed facts of his case record to appellant's wife and her attorney, resulting in a custody proceeding being instituted by his wife which resulted in pecuniary loss to appellant. Since the only statutory grounds for a fair hearing are denial, failure to act on an application, discontinuance or suspension of a grant and inadequacy of assistance, the complaint is not the proper subject of a fair hearing.

5) During January and February of 1967, appellant made approximately 10 to 20 visits to the welfare center, each at the request of the agency, each visit costing 40¢ in carfare. The agency offered to reimburse appellant for one of these visits and this offer was refused.

6) Appellant paid for his transportation from his regular grants and has no outstanding debts as a result thereof.

7) Appellant retained an attorney to represent him in a habeus corpus proceeding brought by his former wife to regain custody of their five children. Appellant was unable to obtain a lawyer from the legal aid society and he denied knowing of any other source of free legal service. The agency has no procedures to supply lawyers. Appellant seeks a grant of $150.00 to pay this fee.

8) Appellant claims that he hired Marion Buckingham as a sleep-in housekeeper on or about April 17, 1967, and that she was to receive a salary of $40.00 per week.

9) Appellant was employed at a full time job on April 17, 1967 and lost the said job on April 30, 1967. On May 23, 1967 appellant started school at the R.C.A. Institute and was as of the date of the hearing still attending school. His school hours are 8:30 a.m. to 1:30 p.m.

10) Marion Buckingham has resided in appellant's home since April 17, 1967 and is presently residing there in a housekeeping capacity. She has two of her own children living with her.

11) The agency refuses to include a grant for a housekeeper in appellant's budget while Mrs. Buckingham is in the home. The agency claims Mrs. Buckingham is not a suitable housekeeper and they would not approve her being paid for that service and further contend that while Mrs. Buckingham is in the house there is no need for a housekeeper.

12) The agency based its decision as to the acceptability of Mrs. Buckingham as a housekeeper on a report from the Hudson County Social Services Board, wherein appellant was charged with being the father of one of Mrs. Buckingham's children and was under a court order to support that child.

13) The agency would consider an application for public assistance for Mrs. Buckingham and her children if she would apply therefor.

Upon a careful consideration of the entire record it is determined that the agency correctly refused to reimburse appellant for carfare previously spent as he has no outstanding debts as a result thereof, and he has no unmet needs for which a grant may be made.

There is no provision in the Social Services Law, Rules of the Board of Social Welfare or the Regulations of the Department of Social Services which would allow a special grant to be issued to cover attorney's fees and, therefore, the agency correctly refused to issue such a grant.

The appellant is in need of a housekeeper during the hours he is in school, to wit 8:30 a.m. to 1:30 p.m. and the agency has indicated willingness to supply a grant for a housekeeper for this period.

The agency's refusal to allow appellant to hire Mrs. Buckingham as a housekeeper based on the information in the Hudson County Welfare Board is improper. Appellant categorically denied he was the father of Mrs. Buckingham's child and that he was under a court order to support the child. No witness for the agency had any personal knowledge as to the truth or falsity of this allegation and the appellant, subsequent to the hearing, submitted a birth certificate naming a different man as the father of the child. In view of these facts no consideration should be given to the Hudson County report.

The agency, however, properly determined that appellant was not entitled to a grant to hire Mrs. Buckingham as a full time sleep-in housekeeper. Section 352.5(g)(1) of the Regulations of the New York State Department of Social Services provides in pertinent part:

> "the cost of housekeeping services shall be met for a recipient in his own home when he is unable

> to perform household tasks and when the necessary service . . . cannot otherwise be obtained without cost." (Emphasis supplied)

Although appellant claims that Mrs. Buckingham was hired by him at a salary of $40.00 per week, it appears that Mrs. Buckingham is in fact living in the home of the appellant without pay. She is in fact performing housekeeping functions for appellant at no charge and, therefore, pursuant to the above cited regulation, no grant for this service is presently required.

In any event, appellant's need for a housekeeper is limited to the morning hours when he is at school.

IT IS THEREFORE HELD:

That the determination of the agency is affirmed.

Dated: Albany, New York
OCT 27 1967

s/ George K. Wyman
COMMISSIONER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

RAYMOND CLERMONT, :

Petitioner, :

-against- : **ANSWER**

GEORGE K. WYMAN, individually and as :
Commissioner of the Department of
Social Services of the State of New :
York,
:
Respondent.
:
---X

Respondent by LOUIS J. LEFKOWITZ, Attorney General of the State of New York, his attorney for his answer to the petition alleges as follows:

1. Denies each and every allegation set forth in Paragraphs marked "3", "6" and "7" of the petition herein, except as appears from the transcript of the proceedings had herein, a copy of which is marked Exhibit "A" and annexed to the original answer to be filed with the Court pursuant to Section 7804-e of the CPLR.

2. Denies that the decision was capricious and an abuse of discretion as alleged in Paragraph "5" of the petition herein.

AS A COMPLETE DEFENSE RESPONDENT ALLEGES

3. That following the denial by the New York State Department of Social Services of certain applications and demands by petitioner, petitioner requested and received a fair hearing pursuant to Social Service Law, Section 353, which

hearing was held before a referee appointed by respondent at which petitioner appeared and testified and was represented by counsel throughout. A copy of the transcript of the hearing and marked Exhibit "A" has been annexed to the original answer. Following the aforesaid hearing and by decision dated October 27, 1967 the respondent determined that the decision of the New York State Department of Social Services was proper in all respects. A copy of the decision has been annexed to the original petition and has been made a part thereof.

4. That this determination was fully supported by the record made in accordance with the law and was in no way arbitrary or capricious.

5. That the petition herein fails to state facts sufficient to entitle petitioner to the relief sought.

6. That the determination herein sought to be reviewed and annulled was made after a statutory hearing, and inasmuch as petitioner sets forth allegations questioning the sufficiency of the evidence adduced and that there was an abuse of discretion, this proceeding pursuant to Section 7803 subd. 4 and Section 7804-g of the CPLR must be transferred to the Appellate Division of the Supreme Court, First Department and upon such transfer such proceeding should be dismissed and the determination affirmed.

WHEREFORE, respondent respectfully requests that this proceeding be transferred to the Appellate Division of the Supreme Court, First Department and that upon such transfer the determination should be affirmed and the petition dismissed.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
Office & P.O. Address
80 Centre Street
New York, New York 10013

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

THOMAS RICCOBONO, being duly sworn, deposes and says:

That he is an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York; that he has read and is familiar with the contents of the foregoing answer; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the reason this verification is not made by respondent is that its principal office is located in a county other than that in which your deponent resides.

THOMAS RICCOBONO

Sworn to before me this
13th day of March, 1968

Irving L. Rollins
Assistant Attorney General
of the State of New York

Sir:
Please take notice that the within is a true copy of a
this day duly entered herein in the office of the Clerk of

Dated, N.Y., ,19

Yours, etc.,
LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office
80 Centre Street, New York, N.Y. 10013

To ,Esq.

Attorney for

Sir:--
Please take notice that the within

will be presented for settlement and signature herein to the Hon.
one of the judges of the within named Court, at

in the Borough of
City of New York, on the day of
19 ,at M.

Dated, N.Y., ,19

Yours, etc.,
LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office
80 Centre Street, New York, N.Y. 10013

To ,Esq.

Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RAYMOND CLERMONT,

Petitioner,

-against-

GEORGE K. WYMAN, individually and as Commissioner of the Department of Social Services of the State of New York,

Respondent.

ANSWER

LOUIS J. LEFKOWITZ,
Attorney General

Attorney for.........Respondent.........................

Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office
80 Centre Street, New York, N.Y. 10013
Tel. No. 488-3441

Personal service of a copy of within ....

is admitted this ....day of

.... 19

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss.:*

..., being duly sworn, deposes and says that he is ....in the office of the Attorney General of the State of New York, the Attorney for................................. herein. On the .... day of ...., 19 be served the annexed upon the following named persons:

Attorney in the within entitled .... by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at 80 Centre Street, New York 13, N. Y., directed to said Attorney at the address within the State designated by .... for that purpose.

Sworn to before me this
.... day of ...., 19

..

Assistant Attorney General of the State of New York

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE

- -x

In the Matter of the Appeal of :

RAYMOND CLERMONT :

From a Determination by the New York City Department of Welfare in order to determine the issues affecting the adequacy of a Grant of Aid to Dependent Children. :

- -x

BRIEF OF APPELLANT

STEPHEN M. NAGLER
Room 1030
150 Nassau Street
New York, N.Y. 10038
Attorney for Appellant

QUESTION PRESENTED

Are current debts incurred while a family was receiving public assistance as a result of essential and necessary legal services, required for the preservation of a family, an appropriate reimbursable special need?

STATEMENT OF FACTS

During the month of April, 1967, the appellant, Raymond Clermont, was the respondent in an action brought by his former wife, Laurent Clermont, for a writ of habeas corpus. The issue in the proceeding was the custody of their five (5) children (Record - p. 64) vested by the divorce decree in Mr. Clermont. The basis of the divorce granted to Mr. Clermont had been adultery (committed in the presence and sight of the children) and the vesting of custody in the father had been in compliance with the wishes of all concerned, especially the children. In the divorce proceeding, Mr. Clermont had been represented by Mr. Hippocrates Koniakos, a member of the Bar of the State of New York, associated with Harry T. Sherman, Esq., at 165 Broadway, New York, New York (Record - p. 63, 64).

In the habeas corpus proceeding, Mrs. Laurent Clermont was represented by the Legal Aid Society of New

York, a corporation permitted to practice law, exempt from the strictures of the Judiciary Law. Mr. Clermont was thereby excluded from this primary avenue of free legal service for the indigent.

Marvin Epstein, Esq., attorney for the Department of Welfare of the City of New York, correctly stated (as his opinion) that the Legal Bureau of the Department of Welfare would not furnish an attorney (Record - p. 67). Unlike the Department of Welfare of Nassau County, the Department of Welfare of the City of New York has no legal services program for clients. As a resident of Queens County, the county in which the habeas corpus proceeding was brought, no free legal service program such as that of M.F.Y. on the lower east side of Manhattan, was available to Mr. Clermont. In short, as the return date of the habeas corpus petition approached, Mr. Clermont faced the prospect of having to defend his family life without any legal representation whatsoever.

Having no expectation that the court might appoint counsel (Record - p. 69, 66), Mr. Clermont approached Mr. Koniakos and requested his services. In fact, in habeas corpus proceedings of a civil nature, no definitive program of providing counsel for the indigent under the administration of the Supreme Court or the County Bar Association exists in Queens County.

The habeas corpus proceeding was largely based on information obtained by Mrs. Laurent Clermont's lawyer from Mr. Clermont's case record (Record - p. 68, 69). This information was divulged by an employee of the local agency in violation of Mr. Clermont's privilege of confidentiality and to his detriment. It is Mr. Clermont's informed belief that without such information, the habeas corpus proceeding could not have been maintained and the cost of counsel would not have been required.

The proceeding, largely through the services of Mr. Koniakos, resulted in a decree awarding custody of 4 of the 5 children to Mr. Clermont. The fifth child was given to Mrs. Clermont, but Mr. Clermont received substantial visiting privileges.

Mr. Koniakos then presented a bill for services rendered, in the sum of One Hundred and fifty ($150.00) dollars, which sum is still unpaid.

POINT I

APPELLANT'S UNAVOIDABLE LEGAL EXPENSES ARE A CURRENT DEBT CREATED OUT OF THE SPECIAL NEEDS OF THE CLIENT.

In incurring the within debt for legal services, the client had absolutely no choice consistent with his duty to preserve his family and their interests. That a layman can not adequately present his own case in a highly technical legal proceeding is a principle deemed self-evident today. Indeed, in a proceeding involving the custody of children, the woman is virtually presumed to be the proper custodian. If the father is to indicate that she is not, and that the best interests of the children are served by vesting custody in him, he must meet a severe burden of proof and marshal substantial evidence. (See Nelson, Divorce and Annulment - Vol. 2, 2nd Ed. 1961, Sec. 15.09). This was the prospect confronting Raymond Clermont, as he approached the habeas corpus proceeding. Without an attorney to represent him, he would have virtually no chance of keeping his children and proving that his custody was in their best interests.

As indicated in the statement of facts, no free legal services were available to the client. The Legal Aid Society represented his adversary wife. No neighborhood legal service program was available to him. No other program providing free legal service could or would have dealt with his legal problem. The Supreme Court of the State of New York, County of Queens, has no panel of lawyers available from which one might be assigned pro bono publico in a civil proceeding. Pursuant to the provisions of the County Law (Sec. 722) a list of lawyers has been established to provide free legal services to indigents in major criminal proceedings, but this has no relation to the legal problems involved here. Also in contrast is the practice in the Bronx and several other counties in which lists of lawyers are made available to the Court by local bar associations to render services to indigents in civil proceedings.

Even more significant is the contrast with Nassau County. In Nassau a legal services program exclusively for welfare recipients has been established under the auspices of the County Department of Welfare. The program functions through payments by the Welfare Department to attorneys selected by clients, for services actually rendered. This is precisely what is being sought by the client-appellant in the present case, and serves as a precedent for such "need" payments by a local welfare agency. The New York City Department of Welfare does not have such a program and specifically refuses to authorize a grant in the present case, notwithstanding the "special needs" of the client.

The unavailability of free legal services left Mr. Clermont no recourse whatsoever. The "special need" for private legal services was unavoidable if Mr. Clermont was to preserve his family. The justness of his cause and the effectiveness of the legal services may be judged by the results.

POINT II

BROAD AUTHORITY TO MAKE A GRANT FOR "SPECIAL NEEDS" INCLUDES THE ATTORNEY'S FEE HEREIN.

Regulations and statutes, state and federal, authorize grants to cover the special needs of clients. 18 NYCRR, Sec. 352.5(n)(q). No limit is placed on the subject matter of such grants, for the obvious reason that the nature of such needs could not be foreseen and vary from one case to the next. The only limitations property placed on special grants are that they be "needed" for some purpose within the contemplation of the Social Welfare Law such as the preservation of "health and decency" (Social Welfare Law Sec. 131(2)) or the preservation of "family life" (Social Welfare Law Sec. 131(2)). So long as the grant is "needed", and is consistent with and in furtherance of some purpose of the law, it can not be objected to on grounds other than its availability from another source. That legal assistance was not available to the appellant from any other source has already been amply illustrated in Point I.

Indeed, pursuant to various subdivisions of 18 NYCRR, Sec. 352.5, a variety of professional fees are commonly granted as special needs. Moreover, sums of money for a multiplicity of services secure such approval in situations in which the need of the client is less apparent.

POINT III

A SPECIAL GRANT FOR LAWYER'S FEES HEREIN IS IN FURTHERANCE OF THE POLICY OF THE SOCIAL WELFARE LAW.

The habeas corpus petition vested in the Supreme Court the authority to determine what would be in the best interests of the Clermont family. Against the weight of normal presumptions, Mr. Clermont had no hope of establishing his case without legal assistance. With legal assistance, Mr. Clermont succeeded in substantially preserving his family's best interests, as the court decree declared.

The Federal Handbook of Public Assistance Administration, IV, Section 3401, in discussing the purposes of ADC assistance states:

> "To live in the family to which he belongs is the foundation of a child's security. The public has an interest and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child.
>
> The assumption underlying the aid to dependent children program is that when a family circle is broken or incomplete, or parents are handicapped by physical or mental disability, the measure most conducive to the child's welfare is the strengthening of the home against the financial impact of these lacks or losses and to give his parent, or other relative, a chance to gain or reestablish control over his affairs.

> Recognizing the fundamental need of the child for security through receiving care, guidance, and affection from his own family the aid to dependent children program is directed toward enabling the parent, or in his absence, a close relative, to ensure continuity in family relationships and to maintain full responsibility for a way of living in which the child naturally belongs. In addition, the program includes in its purpose, providing services, or access to other resources in the community, through which the family may realize their plans and hopes for their children and may improve their circumstances according to their necessity and desire. Thus the purpose of aid to dependent children is two-fold: (1) to make it possible for the child to remain in or return to the custody and care of his parents or of relatives who have a natural bond of affection and concern for his well-being; and (2) to enable the child's unmet need to be supplied."

Section 131, subdivision 2 of the Social Services Law states:

> "As far as possible families shall be kept together, they shall not be separated for reasons of poverty alone, and they shall be provided services to maintain and strengthen family life." (Emphasis supplied).

The form of family life most desirable for the Clermont children was at issue in the habeas corpus proceeding. Had Raymond Clermont been hindered from presenting his arguments effectively through the aid of counsel, the best interests of his family, particularly his children, might well have been defeated.

CONCLUSION

For the foregoing reasons, appellant submits that a current debt incurred as a result of essential legal services should be paid as a special need.

Respectfully submitted,

STEPHEN M. NAGLER
150 Nassau Street
(Room 1030)
New York, N.Y. 10038

MSS
546

SEDFRE

STATE OF NEW YORK VS COLLINS, BETTY et al, 1964-1965
(1964 WORLD'S FAIR DEMONSTRATIONS)

Box 40
Folder 9

State Historical Society of Wisconsin

Please Retain Original Order

To be argued by:
[illegible]

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF [illegible] : [illegible]

THE PEOPLE OF THE STATE OF NEW YORK

-against-

[illegible], [illegible],
[illegible] and [illegible],

Defendants.

Docket Nos. [illegible] - [illegible]

[illegible] MEMORANDUM OF LAW IN SUPPORT OF [illegible]

[illegible]
660 Madison Avenue
New York 21, N.Y.

[illegible]
c/o New York Civil Liberties Un
156 Fifth Avenue
New York, N.Y.

Attorneys for Defendants

Of Counsel:

[illegible], ESQ.

[illegible], ESQ.

[illegible]

[illegible], ESQ.

[illegible]
KARPATKIN, O[illegible]N
660 MADISON AVENUE, NEW YORK 21, N.Y.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS : PART 1B

---X

THE PEOPLE OF THE STATE OF NEW YORK : Docket Nos. B2772 - B2779

-against-

BETTY COLLINS, CAROL LUSTGARTEN,
SHERRY NOYES and DORIS RUTLEDGE,

Defendants.

---X

DEFENDANTS MEMORANDUM OF LAW IN SUPPORT OF DEMURRER

STATEMENT OF FACTS

The defendants are four young women, who reside in various cities in the State of Florida. Two of them are white and two of them are Negro. All of them are students. Miss Noyes is 21, Miss Rutledge is 20, Miss Collins and Miss Lustgarten are 19. All of them are members of the Congress of Racial Equality (CORE), an organization dedicated to the attainment of full racial equality through peaceful non-violent methods. The New York World's Fair opened on April 22, 1964, and on that day large numbers of members of CORE, including Mr. James Farmer, its National Director, were arrested by World's Fair police for engaging in different varieties of peaceful demonstrations at the Fair. Many of those so arrested were merely engaged in peaceful picketing, but some of the peaceful picketers, including these four defendants, were not arrested.

However, on April 28, 1964, these four defendants and no others arrived at the Fair at about 1 P.M. and stationed themselves in a picket line on the walkway in front of the Florida Pavillion. Since they are Floridians, the signs they were bearing were particularly appropriate: Miss Lustgarten, the picket captain, carried a sign reading"We don't want a World's Fair, we want a fair World". Miss Collins: "Holland and Smathers (indicating the two U. S. Senators from Florida) We don't want to filibuster"; Miss Noyes: "Human Rights is everybody's business", and Miss Rutledge: "St. Augustine --- oldest segregated city".

The pickets kept perfect discipline at all times. They maintained a distance of about eight feet from each other. They did not sing, shout any slogans, or engage in any conversation. No person's ingress or egress was blocked or in any way interfered with. Indeed, persons were seen entering the Florida Pavillion while the picketing was in progress. No handbills were distributed. Although there were many newspaper reporters and other media representatives present, and likewise many World's Fair police, there was no visible congregation or crowd collection of any any ordinary Fair visitors or passersby.

About 1:45 P.M., Capt. Frank Monahan, backed up by a detachment of World's Fair police placed the four young ladies under arrest, the grounds being cited in the complaints herein. At the time of their arrest there were some 25 World's Fair police present observing the picketing and available to halt any breach of the peace that might have taken place. The defendants were arraigned before Criminal Court Judge Tolleris at Night Court, and released on $500 bond each. Voluntary counsel was provided at the arraignment, and for all of the ensuing proceedings, by the New York Civil Liberties Union, (NYCLU), 156 Fifth Avenue, New York, N.Y., the New York affiliate of the American Civil Liberties Union (ACLU). The interest of the NYCLU and the ACLU in this case, because of the threat to the constitutional right to peacefully picket under the First Amendment,is obvious, and needs no elaboration

THE ALLEGED CRIMES CHARGED

Each defendant is charged both with the offense of disorderly conduct under Sections 722, ¶(2) and (4), and the misdemeanor "intrusion on real property" under Section 2036. The statutes are as follows:

> "§722. Disorderly conduct
>
> Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:...
>
> [2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;]...
>
> [4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd;]"

> "§2036. Unlawful intrusion on real property
>
> A person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor."

SUMMARY OF ARGUMENT

It is the position of defendants that there is no legal basis for either charge, and that the prosecution should be dismissed and the informations and complaints quashed for the reason set forth in the Argument, infra, but which may be summarized as follows:

1) It is the crassest fiction to suggest that the 1964-65 World's Fair is private property. The place where the defendants were picketing was as much a public thoroughfare as any walkway in Glen Island Park (People v. DeJulis, infra) or Coney Island (People v. Ribinovich, 13 NYS 2d 135 [Sp.Sess. App. Part, 2d Dept. 1939]) or any other area open to the public. Consequently there cannot be any violation of §2036 as a matter of simple statutory definition.

2) Even assuming that there is some private property element attached to the World's Fair, under Marsh v. Alabama, infra, and other Supreme Court decisions cited infra in this brief, the rightof freedom of expression, including peaceful picketing, guaranteed by the First Amendment must be preferred if need be over private property rights. Consequently this activity is permissible, notwithstanding at which stage of the private-public continuum the World's Fair Corporation is

ultimately adjudged to be.

3) Whatever may be the ultimate judgment as to whether or not these defendants did what they did on public property or private property, it is sheer fantasy to accuse them of "disorderly conduct". None of the elements of disorderly conduct were present, and from the facts set forth in the complaint, it is obvious that neither the State nor all of the Pinkerton police engaged by the World's Fair will be able to prove that there was any disorderly conduct. There was plainly no breach of the peace, no intent to provoke a breach of the peace, nor any circumstances whereby a breach of the peace might have been occasioned. We can assume that 25 armed Pinkerton police officers ably led by Capt. Monahan were more than sufficient security to forestall the occurrence of any breach of the peace by these four young ladies.

Moreover, they did not annoy, disturb, interfere with, obstruct or act offensively to others, except perhaps the psychological frustration caused to officers of the World's Fair Corporation who might prefer that the First Amendment to the Constitution did not apply within the territorial limits of the World's Fair. And the only "crowd" collected was the crowd of World's Fair Pinkerton police, and newspapermen on hand to observe and record the events. Therefore the disorderly conduct count could undoubtedly never be sustained as a matter of fact, since the People will not be able to prove a prima facie case, much less prove the defendants' guilt beyond a reasonable doubt.

4) But we maintain that the disorderly conduct complaints must likewise be dismissed as a matter of law, because they clearly charge no crime other than a reiteration of the same events that are charged to constitute a violation of §2036. [On the impropriety of using disorderly conduct as a catchall, see People v. Donegan, infra.]

5) Finally, even assuming that evidence maybe presented that some of the elements of disorderly conduct are present, the Criminal courts of this state have consistently recognized that §722 must yield to the freedom of speech and assembly guaranteed by the First Amendment. see People v. Carcel, infra, and other cases cited.

ARGUMENT

The defendants have been charged with disorderly conduct (Penal Law, §722(2) and (4) and with unlawful intrusion on real property (Penal Law, §2036).

The disorderly conduct charge is predicated on the allegation that "with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants did picket and carry picket signs in front of the [Florida[pavilion, thereby did annoy, disturb, and interfere with persons in the vicinity; and did obstruct the sidewalk to the annoyance of persons wishing to use said facilities, did thereby cause a crowd to collect on said sidewalk." The complaint also alleges that the World's Fair Corporation "has adopted and published a regulation that prohibits demonstrations and picketing on Fair Site without written permission of the Fair Corporation; and prohibits persons from entering the Fair with placards which may be used in unauthorized demonstrations." The complaint concludes by reciting that "after being informed of said regulations, defendants continued their picketing without authorization and were placed under arrest."

The charge of unlawful intrusion is also based upon the World's Fair regulation which purports to prohibit picketing without written permission. The complaint, alleging that the defendants had no such permission, charges that the defendants therefore "were trespassing and intruding upon the real property of the Fair Corporation, and were no longer on said property lawfully and with the consent of the said Fair Corporation."

The World's Fair Corporation regulation concerning picketing which is invoked as the foundation of these prosecutions, would be clearly unconstitutional if it were claimed to have the force of law or if it had been adopted as a local ordinance or state statute.[1] Lovell v. Griffin, 303 U.S. 444; Hague v. C.I.O., 307 U.S. 496; Schneider v. Irvington, 308 U.S. 147; Thornhill v. Alabama, 310 U.S. 88; Cantwell v. Connecticut, 310 U.S. 296; Jamison v. Texas, 318 U.S. 413; Murdock v. Pennsylvania, 319 U.S. 105; Martin v. City of Struthers, 319 U.S. 141; Thomas v. Collins,

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[1] The New York State Legislature authorized the New York City Council to adopt "a special code or codes of law dealing with prohibited acts, protection of life and property, regulation of traffic, fire prevention, regulation of parking, preservation of the peace and the arrest of offenders or any of the above," which was to be prepared by the World's Fair Corporation. The code was to be "administered and enforced by New York World's

323 U.S. 516; Marsh v. Alabama, 326 U.S. 501; Niemotko v. Maryland, 340 U.S. 268; Kunz v. New York, 340 U.S. 290; Staub v. Baxley, 355 U.S. 313; Talley v. California, 362 U.S. 60. See too Edwards v. South Carolina, 372 U.S. 229; Wright v. Georgia, 373 U.S. 284; Henry v. City of Rock Hill, 84 S. Ct.1042.

The one thread which runs consistently through each of these cases is that statues which do not contain adequate constitutional standards for enforcement, and therefore leave room for the arbitrary denial of First Amendment rights, are unconstitutional on their face. If a statute does not embody "narrowly drawn, reasonable, and definite standards for the officials to follow" (Niemotko v. Maryland, supra at 271), if a statute has no "definitive standards or other controlling guides governing the action of the Mayor and Council in granting or withholding a permit" (Staub v. Baxley, supra at 322), it will be struck down as an unconstitutional prior restraint.

The World's Fair Corporation, however, does not - because it cannot - claim that its regulations are the

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(Footnote 1/ continued):

Fair 1964-1965 Corporation and the police force provided by it." Laws of New York, 1963, Chapter 892, Section 4. It seems that the New York City Council has not adopted such a code, though it did adopt a special World's Fair Building Code and Health Code on September 29, 1960. The latter codes were also authorized by the New York State Legislature. Laws of New York 1960, Chapter 429, Section 3.

equivalent of statutes enforceable by criminal prosecution. If they had somehow achieved that status they would be unconstitutional, as we have just pointed out; but the defendants have nonetheless been charged with two offenses which grow directly from the asserted enforcement of these private rules which are without any force of law. Moreover, both of the charges presume to allege that peaceful picketing for the purpose of protesting the denial of the equal protection of the laws to Negroes in the State of Florida is criminal. This overlooks the salient fact that peaceful picketing is one of the forms of speech protected against infringement by the First Amendment. Thornhill v. Alabama, supra, People v. DeJulis, 21 N.Y.S.2d, 995, 174 N.Y.M. 836 (City Court of New Rochelle, ~~Westchester County Court~~, 1940). It overlooks the equally important and perfectly obvious fact that protests against racial discrimination are well inside the scope of protection afforded by the First Amendment. Shelton v. Tucker, 364 U.S.479, NAACP v. Alabama, 357U.S.449; Bates v. Little Rock, 361 U.S.516; NAACP v. Button, 371 U.S.415; Gibson v. Florida Legislative Investigation Committee, 372 U.S.539. Lastly, it overlooks the fact that it is the policy of the city, state and nation to wipe out all forms of discrimination based on race.

We do not deny that picketing may be subjected to reasonable regulation in public places, but it is clear that it cannot altogether be suppressed, as was done here. The World's Fair Corporation will undoubtedly insist, however, that its site is not a public place, but rather entirely private and therefore empowered to prohibit whatever conduct is chooses, the Bill of Rights notwithstanding.

Conclusive of that question, is Chapter 892(3), Laws of New York 1963:

> "A violation of any provision of law relating to safety or the preservation of order occuring on the streets, roads, highways, sidewalks or walkways of the property under the jurisdiction of the New York World's Fair 1964-1964 Corporation shall be deemed to have occurred on a public street, road, highway, sidewalk or walkway and not on private property. This act shall not, however, affect the status of such streets, roads, highways, sidewalks or walkways for the purposes of subdivision 14 of section sixty-one of the public service law, or for the purposes of any law, act or ordinance relating to taxation, licensing or vehicle registration, or for regulatory or any other purposes." [Emphasis added.]

The underscored words speak for themselves. Therefore since the defendants have the constitutionally protected right to picket peacefully in front of any building in New York which fronts on admittedly public property, they have precisely the same right to picket in front of the Florida pavilion which, by virtue of the cited statute, fronts on "a public street, road, highway, sidewalk or walkway and not on private property." See People v. Carcel, 3 N.Y.2d 327, 165 N.Y.S.2d 113 ("more than a mere inconvenience of pedestrians is required" under §722(2) where picketing is concerned); People v. Rifkin, N.Y.L.J., March 13, 1964 (Appellate Term) ("Subdivision 2 of Section 722 of the Penal Law requires, for conviction thereunder, conduct considerably more serious than the mere inconveniencing of pedestrians..."); People v. Donegan, 191 N.Y.S. 2d 70, 19 N.Y.M.2d 541 (Sp.Sess., App. Part., 1st Dept., 1959).

Even in the absence of this statute, we believe that the nature of the Fair, its relationship to the public, and its relationship to the City of New York, all combine to lead to the conclusion that the Fair is so far from being a private enclave and so close to being a creature of the state, that the acts of its officers are as much subject to the Bill of Rights as if the Fair were directly and entirely established, built and paid for out of the public treasury.

In Marsh v. Alabama, 326 U.S. 501, the Supreme Court said:

> "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." At 506.

The property involved in Marsh was a company town whose owners caused a Jehovah's Witness, who wished to distribute literature inside the town, to be prosecuted and convicted under an Alabama statute which makes it a crime to enter or remain on the premises of another after having been warned not to do so. The Supreme Court reversed the conviction, saying:

> "Whether a corporation or a municipality owns or possesses the town the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free."
> At 507-508.

Thus, the Court was equally concerned with the free flow of information, which is the purpose of the First Amendment, as it was with the fact that the town though its land was privately owned, had all the attributes of a public municipality.

Defendants counsel are not unaware of People v. Rozensweig, 13 N.Y. Supp. 2d 795 (N.Y.C. Magistrate's Ct., Queens, 2nd Dist., 1939). In this case, New York City Magistrate Hockert held that trade unionists who were picketing the Brass Rail Restaurant at the 1939 World's Fair were guilty of disorderly conduct solely because the 1939 World's Fair was, in the Magistrates' opinion, private property. The Magistrate observed that, inasmuch as the picketing was peaceful, there would have been no disorderly conduct as a matter of law if the picketing had been "on a public thoroughfare". The case was not appealed. Moreover it does not appear to have been cited in any other reported decision. It is almost self evident that *Rozensweig* has no *stare decisis* effect on this case because: (a) it preceded *Marsh* v. *Alabama*, decided by the United States Supreme Court in 1946 and obviously must be deemed modified by the preferred constitutional position articulated in *Marsh* for First Amendment rights vis-a-vis private property rights; (b) there is no showing that the defendants in *Rozensweig* pleaded or proved that the 1939 World's Fair had all the attributes and incidents of a public governmental entity as is the case of the 1964-1965 World's Fair; (c) the Magistrate, in effect, held that if the World's Fair would have been shown to be public rather than private property his decision would have been otherwise.

We do not suggest that the Fair must qualify as a full-fledged municipality before the *Marsh* doctrine can be said to apply. Rather, the question is whether "to some significant extent the State in any of its manisfestations has been found to have become involved in it." *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715.

The question in *Burton* was whether a privately owned restaurant located in and leased from a parking building owned and operated by the Wilmington Delaware Parking Authority, an agency of the State of Delaware, could refuse service to a Negro. The Court found petitioner's exclusion to be discriminatory state action in violation of the equal protection clause of the Fourteenth Amendment. The Court's conclusion was based on the following considerations: The land and building were publicly owned; the costs of land acquisition, construction and maintenance were defrayed from donations by the City of Wilmington, from loans and revenue bonds, and from the proceeds of rentals and parking services out of which the loans and bonds were payable (The Delaware Supreme Court had found that only some 15% of the total cost of the facility was "advanced" from public funds); upkeep and maintenance of the building were the Authority's responsibility and payable out of public funds. At 723-724.

The comparable attributes of the World's Fair are these: The land on which the Fair is located is publicly owned, consisting of the areas comprising Flushing Meadows Park and Kissena Corridor Park; the land was leased to the World's Fair Corporation by the City of New York without public auction or by sealed bids (Laws of New York 1960, Ch. 428, Sec. 1); all permanent improvements made by the Corporation shall revert to New York City and shall be under the jurisdiction of the Commissioner of Parks (Id., Sec. 2(a); all net revenue derived by the Fair is to be paid to New York City and shall be used for the restoration and improvement of Flushing Meadows Park, and the balance remaining shall be used for educational benefits[2] (Id., Sec. 2(e); "to insure the beauty of the area," the City is empowered to maintain an action to enjoin the construction of signs, billboards, and other advertising displays within 500 feet of the Fair (Id, Sec. 4); the Board of Estimate is empowered to set aside areas near the Fair for tourist camps and parking lots (Ibid); "because of the necessarily close relationship between the future activities of said corporation and the department of parks of said city," certain laws restricting the private employment of Mr. Robert Moses were waived (Id., Section 5); extensive improvements to the highway system to and around the Fair site were made with many millions of public dollars; the City and State of New York, the United States government, and several other states, have spent a substantial amount of public funds to participate in the Fair.

These incidents of local, state and federal involvement in the development and operation of the Fair, though only partial, are substantial. As in Burton, "The State has so far insinuated itself into a position of interdependence with [the restaurant] that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." At 725.

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[2] The City of New York reportedly expects to receive $40 million. Time Magazine, May 1, 1964, p.41. [It appears also that the city has loaned the Fair Corporation $24 million. Ibid.]

It is dispiriting that a corporation established explicitly by statute "for the purpose of holding a world's fair for educational purposes,"[3] and which has had the benefit of substantial financial assistance from local, state and federal government should assert the pwoer to rudely suppress the right of concerned individuals to inform visitors to the fair that certain of its exhibitors -- the State of Florida, for example - is not only the home of oranges, sun, surf and sand, but also one of the states in the nation that systematically denies its Negro citizens equal treatment, that treats its Negro citizens as second-class citizens, that segregates its Negro citizens, that denies its Negro citizens the right of free access to public accommodations, and that denies its Negro children an equal and integrated education. If the State of Florida is something different than its pavilion would lead one to believe, and if the Fair is established "for educational purposes," then the defendants cannot be denied their right to inform the public that Florida misrepresents itself in its World's Fair pavilion. That above all, in the midst of the civil rights revolution that is in progress around the nation should be the principal educational purpose of the Fair. If its officers prefer to pretend that today's world is all gumdrops and sugar plum fairies, they will inevitably be confronted with a different point of view. And because the World's Fair is not a private home, not a private club, not a place of selective admission, but rather is thrown open to the public at large, is the beneficiary of substantial financial assistance from the public treasuries, and its streets and sidewalks having been made public by statute, the defendants' right to assert their different point of view is guaranteed by the United States Constitution.

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[3] New York Laws of 1960, Ch. 428, Sec. 1.

CONCLUSION

The Demurrer should be allowed. The Complaints and Informations should be quashed, the prosecutions dismissed, and the defendants discharged. At the same time it is hoped that this Court will render a written opinion which will make clear that the World's Fair Corporation, its officers and hired police are subject to the Constitution of the United States.

Dated: New York, N.Y., May 18, 1964.

Respectfully submitted,

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, N.Y.

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, N.Y.

Attorneys for Defendants

OF COUNSEL:

MELVIN L. WULF, ESQ.
c/o American Civil Liberties Union
156 Fifth Avenue
New York, N.Y.

Of Counsel (Continued):

CARL RACHLIN, ESQ.
c/o Congress of Racial Equality
38 Park Row
New York, N.Y.

NANNETTE DEMBITZ
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, N.Y.

HOWARD M. SQUADRON, ESQ.
32 West 57th Street
New York, N.Y.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS : PART 1B

---X

THE PEOPLE OF THE STATE OF NEW YORK :

-against- : Dockets Nos.
B2772 - B2779

BETTY COLLINS, CAROL LUSTGARTEN, :
SHERRY NOYES and DORIS RUTLEDGE

: **NOTICE OF MOTION**

Defendants. :

---X

SIR:

TAKE NOTICE that on the informations and complaints filed herein charging the defendants with the crimes of disorderly conduct under Section 722 ¶(2) and (4) of the Penal Law, and unlawful intrusion on real property under Section 2036 of the Penal Law, and the Demurrer filed herein by defendants, the undersigned will move this Court at a term thereof to be held at the Queens County Criminal Court building located at 125-01 Queens Boulevard, Kew Gardens, in the County of Queens, New York, on May 25, 1964 at 10 A.M. of that day or as soon thereafter as counsel can be heard for an Order allowing the Demurrer, dismissing the informations and complaints herein, quashing the prosecution and discharging the defendants on the grounds that the alleged acts set forth in the complaints and informations do not constitute a crime under the Constitution and Laws of the United States and the State of New York, and for such further relief as may be just and proper.

Dated: New York, N.Y., May 18, 1964.

Yours, etc.,

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, N.Y.

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, N.Y.

Attorneys for Defendants

TO:

HON. FRANK D. O'CONNOR
District Attorney of Queens County
126-05 Hoover Avenue
Queens, New York

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS : PART 1B

MAY 20 REC'D

---X

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

BETTY COLLINS, CAROL LUSTGARTEN, :
SHERRY NOYES and DORIS RUTLEDGE, :

Defendants. :

---X

Dockets Nos.
B2772 - B2779

DEMURRER

The defendants, BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES and DORIS RUTLEDGE, by their attorneys, respectfully demur to the informations and complaints filed herein charging them with the offense of disorderly conduct under Section 722 ¶ (2) and (4), and intrusion on real property under Section 2036 of the Penal Law on the grounds that the facts cited in such complaints and informations do not constitute a crime under the laws of the State of New York and cannot constitute a crime under the Constitution of the United States and of the State of New York.

WHEREFORE, defendants demand judgment allowing the Demurrer, dismissing the complaints and informations and discharging them from custody.

Dated: New York, N.Y., May 18, 1964.

TO: HON. FRANK D. O'CONNOR
District Attorney of
Queens
126-05 Hoover Avenue
Queens, New York

MERVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, N.Y.

JANET ANN JOHNSON
c/o Civil Liberties Union
156 Fifth Avenue
New York, N.Y.

Attorneys for Defendants

JUN 24 1964

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : SECOND DEPARTMENT

---X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES and DORIS RUTLEDGE,

Appellants.

---X

Docket Nos.
B2772 - B2779

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by and between the attorneys for the above named appellants and the District Attorney, Queens County, that, subject to the approval of this Court, the appeal herein shall be submitted for the consideration during the June, 1964 term of said Court, upon the following conditions:

1. That the appellants serve a copy of the record on appeal herein, and of their brief, upon the District Attorney, no later than Friday, June 26, 1964;

2. That the District Attorney serve a copy of the respondent's brief upon Marvin M. Karpatkin, Esq., 660 Madison Avenue, New York 21, New York, as counsel for the appellants, no later than Monday, July 6, 1964 at 4:00 p.m.;

3. That the appellants serve their reply brief, if any, upon the District Attorney, no later than July 10, 1964;

4. That the New York World's Fair 1964-1965 Corporation may serve its brief as amicus curiae on counsel for both parties no later than 2:00 p.m., on July 3, 1964; and

5. That the record on appeal and briefs be filed with the Clerk of this Court no later than July 10, 1964.

Dated: New York, N.Y.
June 23, 1964.

KARPATKIN, OHRENSTEIN & KARPATKIN
Attorneys for Appellants

HON. FRANK D. O'CONNOR
District Attorney-Queens County
Attorney for Respondent

By______________________________

SO ORDERED:

Justice of Appellate Division
Supreme Court of the State of New York
Second Judicial Department

CRIMINAL COURT OF THE CITY OF NEW YORK

PART I-B: COUNTY OF QUEENS

--------------------------------------X

The People of the State of New York :
Dockets: B2772
on complaint of : B2773
B2774
Capt. Frank Monahan, : B2775
World's Fair Police B2776
: B2777
-against- B2778
: B2779
BETTY COLLINS,
DORIS RUTLEDGE, : Charge: Viol. Sec.
SHERRY NOYES, 722, subd.
CAROL LUSTGARTEN, : 2 and 4, P. L.

Defendants. : Viol.
Sec. 2036,
-------------------------------------- X Penal Law

June 11, 1964

Before:

HON. GEORGE BALBACH, Judge.

THE COURT: Defendants are charged with violating Section 722, subdivision 2 and 4 of the Penal Law, disorderly conduct, and Section 2036 of the Penal Law, unlawful intrusion on Real Property. They move to dismiss the charges before pleading thereto, asserting that the acts set forth in the complaints do not constitute a crime under the constitution and laws of the United States and the State of New York.

The court is limited in consideration of the motion to the statements as set forth in the complaint, and which must be deemed to be admitted for the purpose of this motion and the pertinent sections of law pertaining thereto, which statutory provisions need not be alleged in the complaint.

The complaint charging a violation of Section 722 of the Penal Law, subdivisions 2 and 4, are on complaint of Captain Frank Monahan of the World's Fair Police Department in which he alleges that on April 28, 1964, at about 2 p.m., at the World's Fair site in front of the Florida exhibit in the County of Queens, City and State of New York, the defendants Betty Collins, Doris Rutledge, Sherry Noyes and Carol Lustgarten committed the offense of disorderly conduct in violation of Section 722, subdivision 2 and 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances wehreby a breach of the peace might be occasioned the defendants did picket and carry picket signs in front of the above pavilion, thereby did annoy, disturb and interfere with persons in the vicinity and did obstruct the sidewalk to the annoyance of persons wishing to use the said facilities and did thereby cause a crowd to collect on the sidewalk. The complaint further states the defendants were asked by deponent on three occasions to desist from such conduct and did refuse to desist. It further states that the complainant advised the defendants that the New York World's Fair 1964-65 Corporation, a lessee and custodian of said Fair site had adopted and published a regulation that prohibits demonstrations and picketing on the Fair site without written permission of the Fair Corporation and prohibits persons from entering the Fair with placards which may be used in unauthorized demonstrations and states that after being informed of said regulations the defendants continued their picketing without authorization and were placed under arrest.

The complaint charging a violation of Section 2036 of the Penal Law, likewise on the complaint of Captain Monahan, charges that on the same date and at the same location at 2 p.m. the defendants violated Section 2036 of the Penal Law in that at that time and place they carried picket signs in violation of a duly adopted and published regulation of the New York World's Fair 1964-65 Corporation, that the Corporation as lessee, being the lawful custodian of the real property on which said acts of the defendants took place and which regulations prohibit picketing or other similar acts on the Fair site without written permission and which regulations also prohibit persons from entering the Fair site with placards, handbills or other materials which may be used in an unauthorized demonstration on said Fair site, which regulations further provide that any person violating this regulation is a trespasser subject to arrrest. The complainant ascertained that the defendants did not have a permit issued by the World's Fair Corporation. The complainant, Captain Monahan, a captain in the World's Fair Police Force duly and legally established by the World's Fair 1964-65 Corporation did identify himself to the defendants and stated that he represented the custodian of said property. He states in his complaint that on three occasions he did warn the defendants of the contents of the aforementioned Fair Corporation's regulations and stated that by their unlawful conduct they were trespassing and intruding upon the property, the real property of said Fair Corporation and were no longer on said property lawfully and with the consent of the Corporation. He states he also warned each of said defendants on each of said three occasions to desist in such unlawful conduct or they would be subject to arrest. Each of the defendants, he states, did refuse to desist and were then placed under arrest.

Defendants, on oral argument through counsel, insist, number one, that the property occupied under lease by the New York World's Fair 1964-65 Corporation is not private property, and, two, that whatever private attributes it may have is negatived by statutes and constitutional provisions. Defendants appear through voluntary counsel of the Civil Liberties Union. The New York World's Fair 1964-65 Corporation - which I will hereinafter refer to as the Fair - appears as Amicus Curiae. The People are represented by the District Attorney of this County.

The Fair was chartered under the Membership Corporations Law of the State of New York and subsequently, and on May 27, 1960, the City of New York entered into a lease with the Fair which lease was ratified, legalized and validated, notwithstanding any provisions of the New York City Charter or any provision of the Administrative Code of the City of New York, or any other act or law or any defect, irregularity or omissions in such lease and amendments thereto, or in the execution thereof or lack of statutory authority therefor, and that validation and ratification was by Chapter 909 of the Laws of 1961.

The Agreement of Lease dated May 27, 1960, was approved by the Board of Estimate June 10, 1960 by resolution, calendar number 272(b), and was printed in the Journal of Proceedings of the Board of Estimate on June 23, 1960, under calendar number 431. The lease and proceedings authorizing execution, adoption and approval of same, being public records, the court takes judicial notice thereof.

Article 8 of the lease requires the Fair to provide a police force and a fire department force. The use under the terms of the lease to which the property may be put is contained in Article 4 of the lease.

Chapter 892 of the Laws of 1963 as amended by Chapter 580 of the Laws of 1964, effective on April 18, 1964, defines the status of the police force provided by the Fair, and defines the status of certain streets, roads, highways, sidewalks and walkways in the area under the jurisdiction of the Fair. Section 3 of the Amending Statute, Chapter 580, of the Laws of 1964, which is the pertinent section, reads as follows:

"A violation of any provision of law relating to safety, regulation of traffic or the preservation of order occurring at or on the streets, roads, highways, sidewalks, walkways, parking fields, parking areas, parking facilities or bus terminals of the property under jurisdiction of the New York World's Fair 1964-65 Corporation shall be deemed to have occurred on a public street, road, highway, sidewalk, walkway, parking field, parking area, parking facility or bus terminal and not on private property, and such parking fields, parking areas parking facilities and bus terminals shall be deemed streets, roads or highways..."

The section then goes on to say that:
"This act shall not, however, affect the private property status of such streets, roads, highways, walkways, parking fields, parking areas, parking facilities or bus terminals for the purposes of subdivision 14 of Section 61 of the Public Service Law or for the purposes of any law, act or ordinance relating to taxation or licensing, or for regulatory or for any other purposes, nor shall this act or any other law, act or ordinance be deemed to require the registration of such vehicles as may be authorized by the New York World's Fair 1964-65 Corporation for use, operation or display within the property under the jurisdiction of said corporation, which vehicles are used, operated or displayed solely thereat or to require the licensing of the owners, chauffeurs, operators or drivers of such vehicles." That's the end of quotation of Section 3.

The matter for determination with respect to the charges against these defendants is whether or not the facts set forth in the complaints sufficiently spell out a crime. The answer depends on the determination as to the nature of the property right of the Fair in and to the property under lease, namely whether private or public.

This case is not one wherein the title, possession and use are exclusively in the municipality but is one wherein the possession and use are wholly in the lessee, the Fair, subject to certain provisions as stated in the lease. Possession carries with it the right to adopt rules and regulations consistent with the use stated.

The use stated, Article 4 of the lease, is to conduct a World's Fair and any and all activities pertaining thereto. The benefit of such use is available to those who fulfill the requirements of the lessee. Payment of an admission charge is authorized and the Fair may do all other things that may be necessary for of appertain to the successful preparation, completion and operation of the World's Fair.

The court adds to the foregoing the provisions of Chapter 580 of the Laws of 1964 herein referred to.

The enabling legislation, the lease provisions and the statute declaring the private property status of the streets, the thoroughfares already referred to, all sustain the private nature of the Fair operation and the property over which it has possession.

However, it is the contention of the defendants that the provision of Chapter 580, Section 3, puts these streets into the class of public thoroughfares.

The court finds to the contrary since the statute specifically states that the streets do not lose their private status. Only for the purpose of violations are they deemed public. A further indication that the Legislature intended the thoroughfares to be private are the provisions exempting vehicles used wholly within the Fair proeprty or under its jurisdiction from registration and permitting operation thereof by unlicensed operators. A further observation with respect to Section 580 is made by the court, namely that such provision is necessary so that a criminal may not seek refuge or avoid penalties of the law by contending that certain acts are not unlawful because they were committed on private property.

The facts alleged in each complaint sufficiently charge the defendants with the offense of disorderly conduct and the crime of unlawful intrusion on Real Property. Picketing, peaceful or not, is a violation of the rules and regulations adopted by the Fair. Such violation is one practiced against a private owner, namely the lessee, the Fair, and as such is the proper subject for a criminal charge. The court refers to People against Rozensweig, 171 Misc. 702, also cited in 13NY Supp. (2) 795, a case involving picketing at the New York World's Fair, 1939, in which the opinion was written by Hon. Jenkin R. Hockert, City Magistrate. Peaceful picketing may be conducted along public thoroughfares subject to reasonable restraints, but the prohibition of picketing on private property used for exhibition purposes is not, in the opinion of the court, violative of any constitution or statutory provisions.

With respect to the charge of violating Section 2036 of the Penal Law, the defendants became intruders when they violated the rules against picketing. A lawful entry may become unlawful by virtue of acts committed on the property of another and may become unlawful even on public property. (People vs. Lawson, 238 NY Supp (2)839; and People vs. Martinez, NY City Criminal Court, docket numbers B2389, 2390, 2391, 2392.

The facts in the case of Marsh vs. Alabama, 326 U.S. 501, cited by the defendants, are not similar to the case involved.

The applicatons, in the form of a demurrer, to dismiss the charges are denied.

State of New York
Court of Appeals

BEFORE: HON. JOHN F. SCILEPPI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Appellants,

against

BETTY COLLINS,
Defendant-Respondent

CERTIFICATE
GRANTING
LEAVE

I, JOHN F. SCILEPPI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

Dated at Kew Gardens, New York
October 28th, 1964

JOHN F. SCILEPPI
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

State of New York
Court of Appeals

BEFORE: HON. JOHN F. SCILEPPI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

against

SHERRY HOYES,

Defendant-Respondent

CERTIFICATE
GRANTING
LEAVE

I, JOHN F. SCILEPPI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

Dated at Kew Gardens, New York
October 28th, 1964

JOHN F. SCILEPPI
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

State of New York
Court of Appeals

BEFORE: HON. JOHN F. SCILEPPI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Appellants,

against

CAROL LUSTGARTEN,
Defendant-Respondent.

CERTIFICATE GRANTING LEAVE

I, JOHN F. SCILEPPI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

Dated at Kew Gardens, New York
October 28th, 1964

JOHN F. SCILEPPI
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

State of New York
Court of Appeals

BEFORE: HON. JOHN F. SCILEPPI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Appellants,

against

DORIS RUTLEDGE,
Defendant-Respondent

CERTIFICATE
GRANTING
LEAVE

I, JOHN F. SCILEPPI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

Dated at Kew Gardens, New York
October 28th, 1964

JOHN F. SCILEPPI
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

COURT OF APPEALS OF THE STATE OF NEW YORK
---X

The People of the State of New York,

Appellants,

-against-

AFFIDAVIT

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES, and DORIS RUTLEDGE,

Defendants-Respondents.

---X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MARVIN M. KARPATKIN, being duly sworn, deposes and says:

1. I am the attorney for the defendants-respondents herein. I submit this affidavit in response to the affirmation of Assistant District Attorney Harvey B. Ehrlich dated February 17, 1965, which was submitted in support of the motion by the District Attorney of Queens County for an enlargement of appellants' time to serve the record on appeal and brief herein.

2. Mr. Ehrlich is quite correct in paragraph 3 of his affirmation, wherein he states that after conferring with me, I indicated that although I would prefer the argument of this appeal to be held as early as possible, I would not oppose this application for enlargement of time. I do not oppose this application.

3. However, I do wish to bring to the Court's attention respondents' desire for an early and expeditious hearing

of this appeal in the April Term. Defendants were convicted of disorderly conduct and trespass for peaceful picketing at the New York World's Fair, several days after opening day, in April, 1964. Their convictions were reversed by the Appellate Term, Second Department, on October 9, 1964. By the time this appeal is argued in the Court of Appeals, approximately six months will have elapsed since such reversal.

4. According to news reports, the World's Fair is scheduled to reopen on April 21, 1965. It is therefore respectfully submitted that it would be desirable and in the public interest for this appeal to be determined as early as possible. I have discussed this with Mr. Ehrlich and he has advised me that there is no objection on the part of the Queens County District Attorney's office to this appeal being scheduled for hearing as early as possible in the April, 1964 Term. Furthermore, it should be noted that Mr. Ehrlich and I both joined in an application to the Appellate Term, Second Department, for an expeditious consideration and determination of the initial appeal from the convictions, such application being necessary to add the appeals to the June, 1964 Term of such Court.

MARVIN M. KARPATKIN

Sworn to before me this
25th day of February, 1965.

EUNICE BURNETT
Notary Public, State of New York
No. 24-5534650
Qualified in Kings County
Commission Expires March 30, 1966

To be submitted by

MARVIN M. KARPATKIN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : SECOND DEPARTMENT

- X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES and DORIS RUTLEDGE,

Defendants-Appellants.

- X

BRIEF OF DEFENDANTS--APPELLANTS

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, N. Y.
Attorney for Defendants

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue
New York 10, N. Y.
Co-counsel for Defendants

To be submitted by
MARVIN M. KARPATKIN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES AND DORIS RUTLEDGE,

Defendants-Appellants.

Criminal Court
Queens County
Docket Nos.
B2772 - B2779

BRIEF OF DEFENDANTS-APPELLANTS

INTRODUCTORY STATEMENT

Defendants appeal from decisions of the Criminal Court of the City of New York, Queens County Part 1-B, Hon. George Balbach presiding, convicting them of the misdemeanor of unlawful intrusion on real property in violation of Section 2036 of the Penal Law, and of the offense of disorderly conduct in violation of Section 722, subdivisions (2) and (4) of the Penal Law. They likewise appeal from the order of Judge Balbach disallowing a demurrer which had been filed in their behalf, urging the dismissal of the complaints, on the grounds that the facts stated therein could not constitute a crime, compatible with the defendants' constitutional guarantees. The demurrer was disallowed by Judge Balbach on June 11, 1964, and the defendants were adjudged guilty after trial by Judge Balbach on that same day. Suspended sentences were imposed by Judge Bernard Dubin on June 17, 1964. An opinion was orally rendered by Judge Balbach in disallowing the demurrer, the transcript of which has been filed as part of the record. No opinion was rendered by the Court upon the finding of guilt. Inasmuch as sentence was suspended, no certificate of reasonable doubt was applied for. The foregoing information is furnished pursuant to Rule V of this Court.

This case arises from peaceful picketing by the four defendants on the sidewalk area in front of the Florida Pavilion at the New York World's Fair on April 28, 1964. The defendants are four young women who reside in various cities in the State of Florida. Two of them are white and two of them are Negro. All of them are students. Miss Noyes is 21, Miss Rutledge is 20, Miss Collins and Miss Lustgarten are 19. All of them are members of the Congress of Racial Equality (CORE), an organization dedicated to the attainment of full racial equality through peaceful non-violent methods.

The New York World's Fair opened on April 22, 1964. It is well known that many forms of civil rights demonstrations were conducted on the Fair grounds on such day by large numbers of persons. However, this case involves only the attempted peaceful picketing by these four defendants on the sidewalk in front of the Florida Pavilion on April 28, 1964.

A number of constitutional and legal questions are set forth and discussed passim throughout this brief. But the essence of the case is whether or not the World's Fair is private property, and if so, is it of that nature of private property where peaceful picketing may not be permitted? There are obviously grave constitutional questions presented in this case and in this appeal. Judge Balbach, in his opinion disallowing the demurrer, observed that the defendants are represented by counsel designated by the

"Civil Liberties Union". Actually counsel, who is serving without fee, was retained by defendants at the suggestion of the New York Civil Liberties Union (NYCLU), the New York affiliate of the American Civil Liberties Union (ACLU). The NYCLU and the ACLU are interested in this case because of their concern that the constitutional right to peacefully picket should not be diminished. Further acknowledgment of the presence of serious constitutional questions is inherent in the fact that the New York World's Fair 1964-1964 Corporation, hereinafter "Fair Corporation", requested permission, and both sides consented, not only to submit a brief amicus curiae in the Trial Court, but to participate in oral argument on the demurrer. The Fair Corporation is similarly, with the consent of both sides, submitting a brief amicus curiae in this Court.

Moreover, the District Attorney of Queens County joined with counsel for appellants in making an extraordinay application to the presiding Justice of this Court, for permission to have this appeal added to the June, 1964 Term of this Court, inasmuch as both sides agree that there are grave constitutional questions, which should be determined as soon as possible, in the light of the limited duration of the World's Fair.

Finally, the following on the record statement by Judge Dubin, at the occasion of his imposing suspended sentences on the defendants, are most pertinent to demonstrating the presence of serious constitutional questions:

> "THE COURT: As far as the case has been decided by another colleague in this Court who found them guilty, I am in the midst of a trial now which probably the same may or may not--issues may or may not occur about public and private property. I cannot go into that aspect or my

> feelings in that aspect at present because this is a different case and this case has been decided. My decision under that aspect will be at a later date probably. However, we have here four young girls, each is a college student. Each felt that they were doing something in behalf of a cause in which they sincerely and earnestly believe and they came from--came a long distance to portray their feelings. The point that impresses me as far as these girls are concerned, everything done here was peaceful. They obstructed nothing. They didn't case so much--they didn't seat themselves down on a sit-down as has been done in many cases. Some cases rightly so; some cases wrongly. Different aspect. But, the sentence--to sentence these girls or even to fine them, I think would be an injustice. What it amounts to as far as these girls are concerned, is technical. Technical question as to whether it was public or private property. There's no question, no question whatsoever, if they did this picketing on Broadway, Queens Boulevard in a peaceful manner it would be entirely legal. The only question here is whether it was public or private property and it was decided it was private property. But, this Court can see no justification whatsoever for a jail sentence and this Court can see no justification whatsoever for a fine in this case. I'm going to suspend sentence on each defendant. God bless you."
>
> (Transcript of minutes of sentence, pp. 9-10).

STATEMENT OF FACTS

Both the misdemeanor and the offense charge are on the complaint of one Capt. Frank Monahan, who testified that he is an employee of the Pinkerton National Detective Agency assigned as Commanding Officer of the Second Precinct, World's Fair Police Department. (R. p. 3) The violation of Section 2036, New York's criminal trespass statute, is alleged on the basis of the conduct ~~of the conduct~~ of picketing by these four defendants in violation of a World's Fair regulation which presumes to prohibit "picketing or other similar acts on the Fair site" without written permission and the defendants' persistence in picketing after Capt. Monahan had allegedly advised them of this regulation and ordered them to desist. The disorderly conduct complaint alleges literally no additional facts other than those required by subdivisions (2) and (4) of Section 722 of the Penal Law, i.e., that by these acts and "with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned" their picketing "did annoy, disturb and interfere with" other persons [subdivision (2)] and "did thereby cause a crowd to collect on said sidewalk" [subdivision (4)].

The lease (People's Exhibit 1) from the City of New York to the World's Fair Corporation was admitted into evidence without objection, as was the so-called "regulation" (People's Exhibit 2) "adopted" by the Fair Corporation, which reads as follows:

> "Demonstrations, parades, congregations, picketing or other similar acts on the Fair site are prohibited except under written permit of New York World's Fair 1964-1965 Corporation. No person may enter the Fair site with sticks, placards, handbills or other materials for use in an unauthorized demonstration.
>
> "Any person violating this regulation is a trespasser, subject to ejection from the Fair, arrest and prosecution."

It was noted that this regulation was apparently adopted on April 21, 1964, one day before the Fair opened (R. p. 5).

The People presented only two witnesses, Capt. Monahan and a Sgt. Moore of the World's Fair Police. The defendants rested at the close of the People's case. The testimony at the trial essentially revolved around the accusation of disorderly conduct, since Judge Balbach had previously stated in his opinion, in disallowing the demurrer, that the World's Fair was "private property." Defendants did not contest the allegation that they had not received "permission" to engage in the picketing.

From the examination and cross-examination of Capt. Monahan and Sgt. Moore, the following facts were disclosed:

April 28, 1964 was a rainy day and there were puddles on the sidewalk and other areas fronting the Florida Pavilion (R.p.19) and attendance was relatively light (R., p. 24, p. 44). There were seven entrances to the Fair (R., p. 45) and the nearest entrance gate to the site of the picketing was 100 feet away (R., p. 24).

The defendants' picketing took place on the sidewalk (R., p.22). The picket line consisted only of the four defendants, walking approximately four to six feet apart (R., p. 47). There was room for any person so desirous to pass between them (R.p.47). They distributed no leaflets, shouted no slogans, sang no songs, made no noise (R., p. 49). Capt. Monahan conceded that they were very polite and courteous at all times (R., p. 50). The sidewalk was 12 to 14 feet wide, and Capt. Monahan estimated that each of the defendants took up no more than approximately 30 inches or 2 and 1/2 feet (R., p.60) of this 12 to 14 foot wide sidewalk. Their picket line was on the sidewalk in front of one of the entrances to the Florida Pavilion; however, there was at least one other entrance on the other side (R., p. 58). The entrance area adjacent to which the sidewalk picketing was conducted was 20 feet wide at the doors, but tapered out into a width of 35 to 40 feet at the point where the walkway reached the sidewalk, where the picketing was conducted (R., p. 59).

Defendants were carrying picket signs relevant to the purpose of their picketing (R., p. 48). Capt. Monahan testified (R., p. 48) that the signs read, among other things, "We want a fair world", "Florida sunshine for everyone", and he testified further "And another one didn't like Smathers." Actually, as conceded by defendants in their memorandum of law in support of the demurrer, Miss Collins' sign read "Holland and Smathers, we don't want a filibuster" (referring to the two United States Senators from Florida and their participation in the filibuster in opposition to the Civil Rights Bill which was then under debate in the United States Senate and has since been passed). Miss Rutledge's sign read "St. Augustine, oldest segregated city". Obviously, the defendants, all Floridians, were seeking to inform visitors to the exhibit established at the World's Fair by the State of Florida about the situation in St. Augustine, about the attitude of Florida towards a Federal Civil Rights Act, and about other aspects of the state of race relations in Florida. They wanted their fellow-Americans to know that there was considerable racial segregation in the State of Florida. They wanted to communicate the existence of profound racial injustice in the State of Florida; the lack of concern for the rights of its Negro citizens by the Florida Government and many of its leading officials.

Upon cross-examination of Capt. Monahan and of Sgt. Moore, it became evident that there was in fact no annoyance or disturbance of other persons. All of the evidence which Capt. Monahan could summon up on this score was an unidentified couple who said to him (R., p. 46) "Why the hell do I have to walk in the street, why don't you put them out in the street." The Captain did not take their names; he could not identify them or describe them; he did not know if this unidentified couple had in fact tried to get into the Florida Pavilion but had their entrance blocked; he did not know if they had tried to walk on the 12 to 14 foot wide sidewalk; indeed, there was not even any testimony as to whether these persons were visitors to the Fair, or employees of the Florida Pavilion, or anything else.

Buttressing Capt. Monahan's complete lack of any evidence that the defendants disturbed anyone within the meaning of section 722(2), the most that Sgt. Moore was able to offer was his opinion that some unidentified persons "had to detour because of the picketing and the location of the area and the weather" (R., p. 76).

Other than this one questionable incident amounting to at most a possibility of slight inconvenience, Capt. Monahan did not receive, directly or indirectly, or learn of in any way, any other complaints arising from the activities of these defendants (R., p. 49). Nor did Sgt. Moore (R., p. 76) who did not even testify as to the Captain's incident.

Obviously, there was no blocking of the entrance. By Capt. Monahan's testimony that there was 4 to 6 feet between each picket, the picket line was at its widest point 18 feet and its narrowest point 12 feet. At all times persons were capable of walking between the pickets. And even extended at its widest, it occupied less than half of the 40 foot wide entranceway to the Pavilion. And, of course, it was always possible to use the other entrance or entrances.

Consequently, there was no violation of Section 722(2).

Similarly, can it truly be said that the defendants were guilty under the provisions of Section 722(4)? Did the picketing cause a crowd to collect? Capt. Monahan testified that the maximum number of people present at the height of the event was "30 to 40" (R., p. 25), this being the number to which the size of the assemblage, such as it was, had increased from its original size of 10 to 15. What was the composition of this "crowd"? When pressed on cross-examination, Capt. Monahan admitted that this 40 consisted of 10 World's Fair police officers, plus one captain and one or more sergeants (R., p.43); [Sgt. Moore later testified that there were two sergeants (R., p.77)]; some 10 persons with either microphones or cameras, obviously newspaper and television representatives (R., p. 51, p.53); and some 20 "other" persons who were moving back and forth together with the ten microphone and camera wielders, and just as obviously newspapermen and newspaperwomen, as much as Capt. Monahan insisted that he did not know if they were reporters (R., p.54). Indeed, when confronted with this breakdown of the "crowd" of 40, consisting exclusively of police officers and reporters, he tried to change his testimony by increasing the 20 others to 30 others (R., p. 56), but the testimony was read back and it was apparent that he had previously said 20 others. Judge Balbach observed at this point: "THE COURT: I heard the testimony he gave a moment ago and I heard that testimony." (R., p. 56). The Captain also admitted that he had no way of knowing if these "others" were merely ordinary Fair visitors who were walking up and down with the pickets talking to them, or if they were newspaper reporters, as they obviously were. (R., p. 57).

Capt. Monahan also gave relevant testimony as to the size and capacity of the World's Fair police forces to deal with any disturbances. In his Second Precinct, he commands 350 men, including 25 sergeants; the other precinct has even a larger complement; and when necessary all of the World's Fair police, more than 700 in number, can be assembled at one point; his precinct alone has 80 guns assigned to it; and the World's Fair police have at their disposal for purposes of communication and concentration of police, not only strategically located station houses, but two-way radios, special police telephones and a number of police vehicles (R., p. 37, et seq.). Apparently, there were more than sufficient police resources available to cope with any possible breach of the peace which might have been occasioned, even had the other elements of disorderly conduct been present.

So that there might be no question that defendants' omission to apply for and obtain permission might create any distinction in their legal position, testimony was further adduced as follows:

Capt. Monahan testified that he knew of no instance where permission to picket had been granted (R., p. 65 et seq.). He testified further that he knew of no application form nor of any permit application procedure whatsoever. Furthermore, it was conceded by the District Attorney, after consultation with counsel for the World's Fair Corporation, who was seated with the District Attorney at the counsel table throughout the trial, that no permission to picket had at any time been granted, although requests for permission to picket had been received. Furthermore, there was read into evidence at the trial (R., p. 64 et seq.) certain passages from an affidavit sworn to by Mr. Charles Poletti a Vice President of the World's Fair Corporation, on June 1, 1964, in an action presently pending in the United States District Court for the Southern District of New York, entitled "James Farmer, et al., plaintiffs, v. Robert Moses and New York World's Fair 1964-1965 Corporation, defendants," 64 Civ. 1666, such affidavit having been presented in opposition to a motion therein for a preliminary injunction. [As of this writing, such motion is still sub judice before Judge Tyler of that Court.] The relevant portion of the Poletti affidavit is paragraph 62, which recites the Fair's "regulation", and then states:

> "This regulation, as applied by the Fair Corporation, bars all picketing on the Fair site. The reference to a 'written permit' should not be understood to mean that such a permit will be granted for picketing of any kind...
>
> "The Fair Corporation has not granted a permit to any organization to picket and does not intend to do so. We are not concerned with the message pickets propose to impart."

STATUTES INVOLVED

New York Penal Law, Section 722. Disorderly conduct.

> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:...
>
> [2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;]...
>
> [4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd;]"

New York Penal Law, Section 2036. Unlawful intrusion on real property.

> "A person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor."

Chapter 580, Laws of New York 1964 (amending Chapter 892, Laws of New York 1963). New York World's Fair - Streets and Facilities.

"§3. A violation of any provision of law relating to safety, regulation of traffic or the preservation of order occurring at or on the streets, roads, highways, sidewalks, walkways, parking fields, parking areas, parking facilities or bus terminals of the property under the jurisdiction of New York World's Fair 1964-1965 Corporation shall be deemed to have occurred on a public street, road, highway, sidewalk, walkway, parking field, parking area, parking facility or bus terminal and not on private property, and such parking fields, parking areas, parking facilities and bus terminals shall be deemed streets, roads or highways. This act shall not, however, affect the private property status of such streets, roads, highways, sidewalks, walkways, parking fields, parking areas, parking facilities or bus terminals for the purposes of subdivision fourteen of section sixty-one of the public service law, or for the purposes of any law, act or ordinance relating to taxation or licensing or for regulatory or any other purposes; nor shall this act or any other law, act or ordinance be deemed to require the registration of such vehicles as may be authorized by the New York World's Fair 1964-1965 Corporation for use or display within the property under the jurisdiction of said corporation which vehicles are used, operated or displayed solely thereat, or to require the licensing of the owners, chauffeurs, operators or drivers of such vehicles."

SUMMARY OF ARGUMENT

POINT I. THE TERRITORY OF THE WORLD'S FAIR, AND ESPECIALLY THE SIDEWALKS AND THOROUGHFARES THEREIN, ARE NOT "PRIVATE PROPERTY" WITHIN THE COMPLETE AND UNREVIEWABLE CONTROL OF THE WORLD'S FAIR CORPORATION AS IF IT WERE AN ORDINARY BUSINESS CORPORATE LESSEE. CONSEQUENTLY, THERE WAS NO TRESSPASS ON PRIVATE PROPERTY AND NO VIOLATION OF SECTION 2036.

POINT II. EVEN ASSUMING THAT THERE ARE SOME PRIVATE PROPERTY ELEMENTS ATTACHED TO THE WORLD'S FAIR, THE CONSTITUTIONAL RIGHT OF FREEDOM OF EXPRESSION, INCLUDING PEACEFUL PICKETING, GUARANTEED BY THE FIRST AMENDMENT, MUST BE PREFERRED IF NEED BE OVER THE FAIR CORPORATION'S PRIVATE PROPERTY RIGHTS. THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN MARSH V. ALABAMA AND SUBSEQUENT DECISIONS BY THE UNITED STATES SUPREME COURT AND THE NEW YORK COURT OF APPEALS DO UPHOLD THE RIGHT OF DEFENDANTS TO PICKET WITHIN THE FAIR GROUNDS WITHOUT OBTAINING PERMISSION TO DO SO. IT FOLLOWS THAT THE FIRST AMENDMENT PRECLUDES THE DEFENDANTS FROM BEING HELD GUILTY OF ANY VIOLATION OF SECTION 2036.

POINT III. THE PEOPLE FAILED TO PROVE THAT THE DEFENDANTS WERE GUILTY OF DISORDERLY CONDUCT.

POINT IV. SINCE THERE IS NO EVIDENCE OF DISORDERLY CONDUCT SUFFICIENT TO SUSTAIN A CONVICTION, THE COURT BELOW MUST HAVE ERRONEOUSLY ASSUMED THE DEFENDANTS TO BE GUILTY OF DISORDERLY CONDUCT MERELY FROM THE FACT THAT THEIR PICKETING OCCURRED ON WHAT THE COURT HELD TO BE PRIVATE PROPERTY. SUCH A HOLDING IS ERRONEOUS AND MUST BE REVERSED.

POINT V. THE COURT ERRED IN NOT ALLOWING THE DEMURRER.

POINT I

THE TERRITORY OF THE WORLD'S FAIR, AND ESPECIALLY THE SIDEWALKS AND THOROUGHFARES THEREIN, ARE NOT "PRIVATE PROPERTY" WITHIN THE COMPLETE AND UNREVIEWABLE CONTROL OF THE WORLD'S FAIR CORPORATION AS IF IT WERE AN ORDINARY BUSINESS CORPORATE LESSEE. CONSEQUENTLY, THERE WAS NO TRESPASS ON PRIVATE PROPERTY AND NO VIOLATION OF SECTION 2036.

The complaints, the arrests, the prosecution, the disallowance of the demurrer, the convictions, indeed the entire People's case, is in effect, based on one highly disputable proposition: that "the Fair site is private property at which picketing may properly be prohibited" (headnote of Point III of brief amicus curiae submitted by Fair Corporation below). Judge Balbach apparently agrees with this proposition since he stated in his opinion:

> "The enabling legislation, the lease provisions and the statute declaring the private property status of the streets, the thoroughfares already referred to, all sustain the private nature of the Fair operation and the property over which it has possession."

Appellants respectfully disagree and urge that this Court must find otherwise, for the reasons which will be set forth in this brief, and that consequently, all of the convictions must be reversed and the complaints dismissed.

It is, of course, clear that there is an absolute right under the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth, to engage in peaceful picketing on public thoroughfares. Lovell v. Griffin, 303 U.S. 444 (1938); Hague v. C.I.O., 307 U.S. 496 (1939); Schneider v. Irvington, 308 U.S. 147 (1939); Thornhill v. Alabama, 310 U.S. 88 (1940); Cantwell v. Connecticut, 310 U.S. 296 (1940); Jamison v. Texas, 318 U.S. 413 (1943); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Martin v. City of Struthers, 319 U. S. 141 (1943); Thomas v. Collins, 323 U.S. 516; (1945); Marsh v. Alabama, 326 U.S. 501 (1946); Niemotko v. Maryland, 340 U.S. 268 (1951); Kunz v. New York, 340 U. S. 390 (1951); Staub v. Baxley, 355 U.S. 313 (1958); Talley v. California, 362 U.S. 60 (1960). See too Edwards v. South Carolina, 372 U.S. 229 (1963); Wright v. Georgia, 373 U.S. 284 (1963); Henry v. City of Rock Hill, 84 S. Ct. 1042 (1964).

Of course, reasonable regulations in such terms as volume of sound, time of day, and proximity to highly congested locations, are permissible. See Kovacs v. Cooper, 336 U.S. 77 (1949). But absolute suppression is plainly an egregious violation of the constitutional command. Furthermore, there may be no constitutional distinction between peaceful picketing in a labor relations context or peaceful picketing for any other purposes. See People v. Kieron, 26 NYS 2d. 291 (Nassau Co. Ct. 1940). "The carrying of signs and banners is a natural and appropriate means of conveying information on matters of public concern", Carlson v. State of California, 310 U.S. 106 (1940). IN Edwards v. South Carolina, supra, the U.S. Supreme Court upheld the action of civil rights demonstrators whose demonstration was considerably more militant and active than that of the classical type of peaceful picketing involved in this case.

Finally, the United States Supreme Court has made it plain that peaceful protests against racial discrimination are not only well within the scope of protection afforded by the First Amendment, but deserve especially solicitous consideration in the light of the fact that the objective of such protests is to secure enforcement of constitutional guarantees; Gibson v. Florida Legislative

Investigation Committee, 372 U.S. 539 (1963); Bates v. Little Rock, 361 U.S. 516 (1960); Shelton v. Tucker, 364 U.S. 479 (1960).

Is the World's Fair private property or is it something other than private? Appellants urge that private status is absolutely foreclosed by an overwhelming aggregation of incidents and expressions of official governmental action by the governments of the State of New York and the City of New York. The power property and prestige of government is behind and intertwined with the Fair to an extraordinary degree. There follows such delineation as counsel has been able to compile, all taken either from New York State statutes, New York City ordinances, the World's Fair lease itself, or other matters of which this Court might take official notice.

(a) The ~~publically~~ PUBLICLY owned property on which the World's Fair is located is leased (People's Exhibit 1) from the City of New York, under an agreement specifically provided for by the New York State Legislature, N.Y. Laws 1960, Ch. 428, § 1. A reading of the lease will make it plain that this is vastly different from the customary lease by a municipal corporation to a private corporation. There is not even a hint of arms length bargaining. It is more properly catagorized as a "grant" than a lease. There is not even the traditional reference to "one dollar" for rent. Indeed this is the first lease in the entirety of counsel's experience, involving literally hundreds of such documents, both printed and typed, dealing with public as well as private parties, where the word "rent" is not even mentioned.

(b) The net revenues from the World's Fair Corporation are to revert to the City of New York for the improvement of the

Flushing Meadows area; the remainder of such revenues are to be used for educational purposes (Id. §1). Thus, no part of the profits is to "inure to the benefit of any member thereof" (Id. §1). Public opinion would not tolerate any truly private enterprise receiving such a fantastic windfall. It would be unconscionable to allow anyone other than a governmental body or its conduit, the Fair Corporation, to reap the profits from such a unique undertaking.

(c) By the terms of the lease and in the establishing legislation, Ch. 428, §2, the Commissioner of Parks and the Board of Estimate of New York City "shall approve the detailed plans for each and every permanent improvement, including buildings designed for permanent use (but used in the Fair at present) and the locations thereof...." (emphasis added) Where else but on city park land is the Commissioner of Parks so authorized and directed? On what other real estate improvement project must the Board of Estimate approve "detailed plans?" This does not sound like municipal supervision over private construction, e.g., concerning labor and safety regulations. This is the attitude of City Fathers dealing with public property.

(d) Furthermore, by the provisions of the lease, all the ~~premanent~~ PERMANENT improvements are to revert to the City of New York and shall be under the jurisdiction of the Commissioner of Parks, and shall be devoted to park purposes, Ch. 428, §2(a).

(e) Chapter 892 of the Laws of 1963, which denominates, the Fair property as "public" for certain purposes, invests the security officers at the Fair with the full ~~panolpy~~ PANOPLY of powers afforded peace officers outside the Fair. Such too is the effect of N.Y. Laws 1960, Ch. 428 §2. The unusual significance of this statute was recognized by the Court below as well as appellants, although appellants urge that it was misconstrued by the trial court. It is discussed, infra, pp. 25-27.

(f) The Fair Corporation is obligated to prepare a special code of laws dealing with health, sanitation and building, such code to be submitted to and "approved" by the Council of the City of New York, Ch. 428, §3. Violations of such code were to have the Penal Law status of misdemeanors unless otherwise provided (Id. Sec 3). This is an outright delegation by the State of municipal law-making authority to which the State is lending its power in enforcement.

(g) The City of New York has the authority under Ch. 428, §4, to enjoin the ~~construction~~ CONSTRUCTION of signs, billboards, and advertising devices, et al, within 500 feet of the Fair. Such power is granted on the grounds that it is necessary to insure the "safe and orderly conduct of such World's Fair and to protect the useful and desirable purpose of same, and to provide for the safety, convenience and comfort of patrons...."

(h) Also under Ch. 428, §4, the Board of Estimate is empowered to set aside areas near the Fair for tourist camps and parking lots. These are further indications of the coordinated efforts of State and municipal governments in making the Fair successful.

(i) Vast and complex road improvements have been made in conjunction with the building of the World's Fair. These have been financed, developed, and accelerated by the State of New York and the United States for the express purpose of assisting the operations of the World's Fair. See "Progress Report

No. 9", published by the Fair Corporation, "Builders of the Fair", dated September 26, 1963, pp. 60-61. The approximate cost of such expenditures has been reported in the press as $124,000,000.

(j) Furthermore, there has been considerable advertising conducted by the City and State of New York in the form of brochures, signs, travel books, radio and television notices, and advertising legens on the license plates of New York registered motor vehicles. See Froslid v. Hults, 248 N.Y.S. 2d 676 (App. Div. 2nd Dept., 1964) where the Appellate Division of this Department unanimously upheld the State's right to advertise on license plates on the grounds that the Fair is a matter of public concern, for the public good, and for the general welfare of the State." Id., at 679.

(k) Both the City and the State of New York have exempted the Fair Corporation from City and State taxes on receipts, sales, property, income, and admission fees to the Fair; the United States Government has, in addition, granted the corporation tax exemption for Federal income tax purposes; see affidavit of Charles Poletti, cited supra at ~~p. 11.~~ PP 10-11.

(l) Considerable sums of money have been expended on the World's Fair by State, City and Federal governments. The City of New York alone has been reported to have appropriated $24,000,000 for structures and exhibits to be seen at the Fair.

(m) The City of New York has invested considerable funds in a science museum on the World's Fair property.

(n) The abovementioned expenditures are all separate from those authorized under Chapter 421 of the 1960 Laws. This section provides for an official New York State Commission to "prepare for participation by the State in the World's Fair", and authorizes independent appropriation therefore.

(o) Reference to the lease itself shows the close interconnection of the Fair Corporation and the City and State governments (See ¶1, 17, 20 of the lease.) In ¶20 the Fair Corporation is allowed to use the New York City building as its temporary office on a rent-free basis, again indicating that the corporation is no different from an administrative arm of New York City and State government.

(p) Three high New York City officials (apparently New York City Council President, Paul R. Screvane; Deputy Mayor Edward F. Cavanagh, Jr.; and Commissioner of the Department of Public Events, Richard C. Patterson, Jr., (See "Progress Report No. 9", supra, at pp 62-65) are members of the Executive Committee of the corporation.

(q) It is our outrightly stated in Chapter 428, §5, of the Laws of 1960, that it is "legislative policy that certain top executives of the Fair Corporation shall be persons with experience in public office and especially with experience in the administration of the park system of New York City, and...because of the necessarily close relationship of the corporation and the Department of Parks, it is reasonable and appropriate to exclude such executives with this experience..."(e.g., Mr. Robert Moses) from the operation of certain laws restricting their activities (Id., §5). Thus, the enabling legislation specifically suspends provisions of the Charter of the City of New York, §886; the N.Y.C. Administrative Code §§897-1.0 and 898-1.0; and the New York State Public Officers

Law, §§73 and 74. It is apparent then that the State Legislature itself recognizes the intimate connection between the State and the World's Fair, especially insofar as concerns personnel and operations.

From all of the foregoing, the conclusion is compelled that the World'sFair has been set up on PUBLICLY ~~publically~~ owned property, for public purposes, to benefit the public, and with an expressed objective of obtaining the patronage of as many of the public as possible. The full power and authority of many organs of government have been mobilized in pursuance of these ends. Unquestionably, the Fair is not a private enclave; it must be held to stand on a different footing from one's own home. Every conceivable method of insuring that the public will be present on the sidewalks and thoroughfares of the Fair has been employed by the City and State governments. The cases make it clear that the government may not, at the same time, say that members of the public cannot peacefully exercise constitutional rights when they arrive on these sidewalks and thoroughfares.

The right to engage in peaceful picketing on public thoroughfares is not limited to such thoroughfares as may be described as ordinary streets and sidewalks, but also includes walkways, walkthroughs, alleyways, and any similar structures which are used as thoroughfares by and for members of the public. Such a public thoroughfare is the boardwalk at Coney Island, People v. Ribinovich, 13 N.Y.S.2d 135 (Sp.Sess.App.Pt., 2nd Dept. 1939) notwithstanding the fact that it is considered park area and within the jurisdiction of the New York City Department of Parks; similarly, walkways in Glen Island Park in Westchester

County, People v. DeJulis, 21 N.Y.S.2d 995, 174 N.Y.M. 836 (City Ct. of New Rochelle, 1940). Indeed, park lands have almost a special character as appropriate places "for purposes of assembly, communicating thoughts between citizens, and discussing public questions"; Hague v. C.I.O., supra.

The Fair Corporation will undoubtedly urge, as it urged in its brief below, that Ribinovich, DeJulis and similar cases are distinguishable from the instant case because no admission was charged, either in Glen Island Park or on the Coney Island boardwalk, while admission is charged into the World's Fair. But defendants respectfully suggest that this is a distinction without a difference. Defendants have not exhaustively researched whether or not there are any public beaches, resorts or parks which charge admission to pedestrians, but it is common knowledge that most persons have no practical access to many of such places without the use of the parking facilities, and the payment of the required fee. Virtually everyone who goes to Jones Beach drives there and parks in the parking lot. Surely there is the same right to peacefully picket in Jones Beach as there is in Glen Island Park and on the Coney Island boardwalk. And would there be any difference if the New York City Department of Parks, for revenue purposes, installed turnstiles and collected five cents from each person who desired to use the Coney Island boardwalk? Would Ribinovich have been decided otherwise if the pickets therein had had to pay an admission fee to get to the boardwalk? Of course not. Whatever rights there are to peacefully picket, based on the constitutional guarantees of the First Amendment, either on the thoroughfares of Glen Island Park, or Jones Beach, or the Coney Island boardwalk, or the World's Fair site, are completely unaffected by whether or not admission is charged.

In support of its conclusion that the World's Fair is private property, the learned Court below cites three decisions: People v. Lawson, 238 N.Y.S.2d 839 (N.Y.Crim. Ct., N.Y.Co. 1963); People v. Martinez, New York City Criminal Court, N.Y.Co., Docket Nos. B2389, B2390, B2391 and B2392 (unreported 1964 decision); and People v. Rozenzweig, 13 N.Y.S.2d 795 (N.Y.C. Magistrate's Ct., Qns.,2d Dist. 1939). We respectfully submit that each of these cases is plainly inapplicable to the case before this Court.

People v. Lawson, supra, did involve a conviction for violation of Section 2036 (by a divided Court, Judge Phipps dissenting and voting to acquit). But the distinctions between the defendants and those in Lawson, a group who staged a sit-in in a real estate office after the complainANT refused to rent to a Negro, are apparent: (a) It was a private real estate office, not a quasi-public institution like the World's Fair by any definition; (b) unlike the peaceful picketing by the four young girls here in the face of a large contingent of World's Fair police, the Court observed, concerning the defendants in Lawson:

> "They had no right to take the law into their own hands and seek to overwhelm the complainant by sheer force of numbers."

In Martinez, defendants were convicted under Section 2036 for refusing to leave the premises of New York City Police Headquarters. Here again, the distinctions between the enclosed high-security police structure at 240 Centre Street and the 640 acres and undoubtedly hundreds of miles of passageways and thoroughfares at the World's Fair site, is apparent. But, it may be asked, is not the Martinez case applicable since it involved police headquarters, an admittedly public building where there could be no "public" or "private" question? The simple answer here is that neither in Lawson nor in Martinez was the activity conducted on a public thoroughfare. Although police headquarters is undoubtedly a public building, its use is available to members of the public who have appropriate business therein. Promenading on thoroughfares is simply not possible within the edifice of police headquarters.

In People v. Rozenzweig, supra, New York City Magistrate Hockert held that trade unionists who were picketing the Brass Rail Restaurant at the 1939 World's Fair were guilty of disorderly conduct solely because the 1939 World's Fair was, in the Magistrate's opinion, private property. The Magistrate observed that, inasmuch as the picketing was peaceful, there would have been no disorderly conduct as a matter of law if the picketing had been "on a public thoroughfare". The case was not appealed. Moreover, it does not appear to have been cited in any other reported decision. It is almost self-evident that Rozenzweig has no stare decisis effect on this case because: (a) it preceded the landmark case of Marsh v. Alabama, discussed infra, decided by the United States Supreme Court in 1946 and obviously must be deemed modified by the preferred constitutional position articulated in Marsh for First Amendment rights vis-a-vis private property rights; (b) there is no showing that the defendants in Rozenzweig pleaded or proved that the 1939 World's Fair had all the attributes and incidents of a public governmental entity as is the case of the 1964-1965 World's Fair; and (c) the Magistrate, in effect, held that if the World's Fair would have been shown to be public rather than private property his decision would have been otherwise.

Finally, it must be stated, with all due respect, that neither a 1939 decision by a New York City Magistrate, nor more recent decisions by the New York City Criminal Court in New York County, are in any way binding upon this Honorable appellate Court. If this Court is not persuaded by the reasoning of any of these decisions of inferior criminal courts, as appellants are not, they need not be regarded as any precedent whatsoever.

The Court below gives considerable emphasis to Chapter 892 of the Laws of 1963, as amended by Chapter 580 of the Laws of 1964. The essence of this statute, Section 3, is that violations of any safety, traffic or similar provision of law, occurring within the Fair grounds, shall be deemed to have occurred "on a public street, road, highway, sidewalk, etc., etc. ...and not on private property..." The statute then exempts from its operation certain taxation, licensing, and other regulatory legislation, stating that insofar as such other statutes are concerned, the thoroughfares at the Fair shall not have their "private property status" affected. Obviously, one of the purposes of the limited exemption was to insure that chartered busses, for example, would not be immunized from motor vehicle license requirements during such time as they operate within the Fair grounds.

But the statute does contain the enigmatic language that private property status shall not be affected, not only for taxation, licensing or other regulatory purposes; it also says for any other PURPOSES ~~pupreses~~..." What is meant by "any other purposes"? Neither the language of the statute, nor any legislative history clarifies the meaning of the phrase. It probably intends to include any other legal provision akin to a "taxation...licensing... or other regulatory" provision. There is certainly no warrant to assume that by the simple insertion of the word "other", the legislature intended to make the fair "private" so as to facilitate the prohibition of picketing.

Whatever the words may mean, as much as it might like to, the Fair Corporation cannot have it both ways. It cannot, on the one hand, claim that it is a purely private fiefdom not subject to constitutional requirements of the First Amendment; and then, on the other hand, claim the right to be regarded as public property for the purpose of the application of penal statutes to such public property. It is most proper that the streets of the World's Fair have been declared by statute to have the status of public streets for purposes of maintaining public order via the enforcement of the penal laws. It follows that there must be the same constitutional limitations on public streets and thoroughfares within the Fair as there are on public streets and thoroughfares outside of the Fair.

Judge Balbach states in his opinion that one of the purposes of this statute is to insure that the World's Fair will not become a privileged sanctuary for criminals whose acts, criminal outside the Fair grounds, would suddenly be rendered non-criminal within the Fair grounds. This is a perfectly reasonable objective. But it is stretching the statute beyond all reason to claim that this by itself is conclusive; that the mere fact that the Legislature enacts a statute which says that a crime committed within a certain enclave is as much a crime as if it were committed outside that enclave, _ipso facto_ renders the enclave private for all purposes. The fact that disorderly conduct or any other crime could be committed within Bronx Park, for example, or on the Coney Island boardwalk, did not _ipso facto_ render either of those facilities private.

Indeed, the argument is much the other way. The State has declared that certain thoroughfares in use by the public are to be regarded as public, and citizens must observe the same cautions in their behavior thereupon as on any ordinary public street lest they run afoul of the law. However, the State cannot at the same time say that such citizens have been simultaneously deprived of the rights which they normally would have on public streets. It is only reasonable to assume, if it is not constitutionally required, that the Legislature did not intend to simultaneously impose a burden and remove the benefit. Such a strained interpretation should certainly not be given to the statute without an explicit warrant from the statutory language.

POINT II

EVEN ASSUMING THAT THERE ARE SOME PRIVATE PROPERTY ELEMENTS ATTACHED TO THE WORLD'S FAIR, THE CONSTITUTIONAL RIGHT OF FREEDOM OF EXPRESSION, INCLUDING PEACEFUL PICKETING, GUARANTEED BY THE FIRST AMENDMENT, MUST BE PREFERRED IF NEED BE OVER THE FAIR CORPORATION'S PRIVATE PROPERTY RIGHTS. THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN MARSH V. ALABAMA AND SUBSEQUENT DECISIONS BY THE UNITED STATES SUPREME COURT AND THE NEW YORK COURT OF APPEALS DO UPHOLD THE RIGHT OF DEFENDANTS TO PICKET WITHIN THE FAIR GROUNDS WITHOUT OBTAINING PERMISSION TO DO SO. IT FOLLOWS THAT THE FIRST AMENDMENT PRECLUDES THE DEFENDANTS FROM BEING HELD GUILTY OF ANY VIOLATION OF SECTION 2036.

We respectfully contend that the learned Court below was grievously in error when it sought to dispose of the United States Supreme Court decision in Marsh v. Alabama, 326 U.S. 501 (1946) by merely stating "The facts in the case of Marsh v. Alabama...are not similar to the case involved..." and no more. In law and in fact Marsh v. Alabama is very much in point. Marsh involved a clash between a company town, Chickasaw, Alabama, all of whose streets, sidewalks, buildings and thorough fares were owned outright by a private shipbuilding corporation, and the First Amendment rights of Jehovah's Witnesses who wished to distribute literature and proselytize on the streets of the town. The witnesses were arrested for violation of the Alabama criminal trespass statute, whose provisions are not substantially different from Section 2036, New York's criminal trespass statute. The United States Supreme Court reversed the conviction, holding, among other things:

> "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.
>
> "Whether a corporation or a municipality owns or possesses the town the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free." (Id. at 506).

Although Judge Balbach does not indicate the basis of his attempted distinction, it may be assumed that he was persuaded by the argument presented by the World's Fair as amicus curiae before him to the effect that Marsh v. Alabama was a special sui generis holding concerning a company town and the rights of citizens permanently resident in such town, but thoroughly inapplicable to visitors to the World's Fair. However, Mr. Justice Black speaking for the Court, made it clear that there is no distinction between the First Amendment rights of residents and visitors:

> "Can those people who live in or come to Chickasaw be denied freedom of press and religion simply because a single company has legal title to all the town?" (Emphasis added) (Id. at 505)

The essence of the Marsh case, however, is the statement by the Supreme Court of the constitutional requirement of how a court must be guided when there is a clash between private property rights and First Amendment rights:

> "When we balance the constitutional right of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a privileged position." (Id. at 509)

Attempts to distinguish Marsh on a factual basis are particularly inappropriate since, as a matter of fact, the World's Fair is considerably less private and more public than the company town of Chickasaw, Alabama. There was no question but that the Gulf Shipbuilding Corporation had complete and indefeasible title to every square inch of real estate in the town, and could close it down completely at its whim if it so desired. The Fair Corporation and its distinguished President, notwithstanding all of his plenipotent powers, certainly could not lawfully bar entrance to the Fair to any person who paid the stipulated admission fee. Chickasaw was not park land "leased" rent-free by some municipality in the State of Alabama to the Gulf Corporation for a limited period of time with a specific reversion of property and all net income. We respectfully ask the Court to review the large number of delineated items of official governmental involvement in the New York World's Fair, set forth in Point I, *supra*, and consider how many less were applicable in the *Marsh* situation. Consequently, if there was a right to peacefully picket in Chickasaw, there is, *a fortiori*, ~~just~~ AT LEAST as much of a right to peacefully picket at the World's Fair.

The principle of *Marsh* v. *Alabama*, supra, has been endorsed and applied by the New York Court of Appeals as well as lower State Courts. *Watchtower Bible and Tract Society v. Metropolitan Life Insurance Company*, 297 N.Y. 339 (1948) involved the rights of Jehovah's Witnesses to distribute literature and otherwise engage in proselytizing activities within the Parkchester residential community in the Bronx, consisting of 129 acres and 171 apartment houses, and a number of private streets and other thoroughfares, the title to all of which was concededly held by the Metropolitan Life Insurance Company. The precise question before the court in *Watchtower* did not involve activities on the privately owned streets and sidewalks of Parkchester, but the attempt by Metropolitan to prevent Jehovah's Witnesses from carrying on their activities "inside of and into the several floors and inner hallways of multiple dwellings". The court held that it was not improper to restrict entrance for door-to-door solicitation within the apartment buildings to those tenants who indicated that they did not object. But it is clear from the decision that *Marsh* v. *Alabama*, *supra*, protected activities on the streets and thoroughfares of Parkchester, regardless of private ownership. The Court of Appeals wrote:

> "It is undisputed that this defendant has never sought in any way to limit the Witnesses' activities on the streets or sidewalks of Parkchester, some of which are privately, and some publicly, owned. The distribution

> which this defendant's regulation inhibits was not on streets, sidewalks, or other public or quasi-public places, but inside of and into, the several floors and inner hallways of multiple dwellings." (Id. at 348)

Marsh is also cited with approval by our Court of Appeals in Dorsey v. Stuyvesant Town Corporation, 299 N.Y. 512 (1949) and Danbois v. New York Central Railroad, 12 N.Y. 2d 234 (1963).

In People v. Barisi, 86 N.Y.S. 2d 277 (1948) a New York City Magistrate applied Marsh to permit picketing in Pennsylvania Railroad Terminal after conceding that it was private property. Magistrate Andrews pointed out what is really the essential test for any court:

> "The testimony evidenced no acts by the defendants which would have justified their arrest if the picketing had taken place on a public thoroughfare other than a slight interference with persons going to and from trains, but no more than is encountered by the average person in that busy state."

The Magistrate stated the constitutional principle, which in the light of Marsh, must be applied in this case: If what the defendants did at the World's Fair would have been permissible on any public thoroughfare outside of the World's Fair, they have committed no crime.

Still another illustration of the preferred position of peaceful picketing, vis-a-vis claimed private property rights, was the decision in Hearns Department Stores, Inc. v. Livingston, 125 N.Y.S. 2d 800 (Sp. T. N.Y. Co., Pt. 3, 1953) where an application to enjoin picketing on an admittedly privately owned street was denied. The decision was reversed on other grounds, and an injunction granted, 125 N.Y.S. 2d 187 (1st Dept. 1953) since there was actual and threatened violence and an actual and threatened sit-down strike inside the employer's property. It is interesting, however, that the Appellate Division did not condemn picketing within the private street, but did proscribe sitting down within the employer's property. Here again, as in the Watchtower case, the New

York courts have recognized the difference between the right to peacefully picket on a thoroughfare, albeit private, and the absence of a right to actually trespass within a private structure.

Appellants do not suggest that the Fair must qualify as a full-fledged municipality before the Marsh doctrine can be said to apply. Rather, the question is whether "to some significant extent the State in any of its manifestations has been found to have become involved in it." Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

The question in Burton was whether a privately owned restaurant located in and leased from a building owned and operated by the Wilmington, Delaware Parking Authority, an agency of the State of Delaware, could refuse service to a Negro. The court found petitioner's exclusion to be discriminatory State action, in violation of the equal protection clause of the Fourteenth Amendment. The court's conclusion was based on the following considerations: The land and building were publicly owned; the costs of land acquisition, construction and maintenance were defrayed from donations by the City of Wilmington, from loans and revenue bonds, and from the proceeds of rentals and parking services out of which the loans and bonds were payable (the Delaware Supreme Court had found that only some 15% of the total cost of the facility was "advanced" from public funds); upkeep and maintenance of the building were the Authority's responsibility and payable out of public funds. (Id at 723-724).

The comparable attributes of the World's Fair are obvious from a review of the itemization set forth in Point I of this brief.

These incidents of local, State and Federal involvement in the development and operation of the Fair, though only partial, are substantial. As in Burton, supra, "The State has so far insinuated itself into a position of interdependence with (the restaurant) that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." (Id. at 725).

It can be expected that the World's Fair Corporation will attempt to distinguish the Burton case by pointing out that unlike the restaurant in Wilmington, Delaware, the World's Fair does not discriminate against Negro patrons, nor indeed does it permit any of its exhibitors or concessionnaires to do so. This may or may not be so, but it is [redacted] irrelevant to the issues in this case. But the attempt to make such a distinction plainly misreads the purpose for which the Burton case is cited: that when the State involves itself in a private enterprise to the extent to which it was involved in Burton, and to an even greater extent as it is here, the so-called private enterprise becomes so endowed with a public or quasi-public status that there can be no abridgment of rights. As the Supreme Court said in Burton at page 726:

> "...what we hold today is that when a state leases public property in the manner and for the purpose shown to have been the case here, the proscription of the Fourteenth Amendment must be complied with by the lessee as certainly as though they were binding covenants written into the agreement itself."

And as the Supreme Court held almost a half century ago, in Buchanan v. Warley, 254 U.S. 60, (1917) in the decision which invalidated racially restrictive zoning ordinances:

> "Where the state has delegated to private persons a power so similar to lawmaking authority, its exercise may fairly be held subject to constitutional restrictions."

We respectfully submit that the Court below was seriously in error in its attempt to pose the problem as it did:

> "The answer depends on the determination as to the nature of the property right of the Fair in and to the property under lease, namely whether private or public."

The question before the Court below, and before this Court, and indeed before any court considering a Marsh-type problem, is not one of deciding whether the situation falls within the public receptacle or the private receptacle. Obviously, as in so many situations in the actual world and in business and public affairs, the problem must be viewed in the context of a spectrum or a continuum with "public" at one end and "private" at the other. Obviously, the World's Fair is not a private club, or a wholly-owned resort island in the Caribbean. Perhaps an argument can be made on the other hand, that it is not as public, for example, as the beach at Coney Island, or Bronx Park, or Times Square, or Queens Boulevard, as suggested by Judge Dubin. Of course, appellants do not make any such concession. Our position, as set forth in Point I, is that the World's Fair has at least as many public endowments and characteristics as the Coney Island boardwalk and similar public places of resort, gathering and accommodation.

But where does the Marsh situation fit in on the above public-private continuum? Where does Pennsylvania Station fit in? Where does Parkchester fit in? Surely the World's Fair is at least as quasi-public as these.

Chapter 892, as amended by chapter 580, discussed more fully in Point I, *supra*, is, of course, relevant in consideration of the relative private-public status of the Fair. But even accepting Judge Balbach's strained interpretation of the statute, i.e., that the "private property status" reservation governs the right to peacefully picket, this can hardly be conclusive, as his opinion states. It is at most one contact point which points in a private property direction, to be weighed against the large number which weigh so heavily on the public side of the scale.

For a careful consideration of the various factors which must be weighed in determining whether the private or the public considerations prevail in a peaceful picketing situation, the attention of the Court is respectfully invited to Freeman v. Retail Clerk's Union, Local 1207, 362 P. 2d 803 (1962), and Schwartz-Torrence Investment Corp. v. Bakery & Confection Workers Union, 35 Cal. Rep. 179 (1963). Both of these cases involved picketing on the sidewalks WITHIN ~~adjoining~~ parking lots of privately owned shopping centers. There was clearly no question ~~of~~ BUT THAT private title WAS in the shopping center proprietor. But as the California Court held, at page 184:

> "However, attaching the label of private property to the area involved is not in and of itself the answer to the question...Two competing social interests are brought into sharp conflict, the conflict between property rights and freedom of speech."

Both courts went on then to evaluate the factors and to conclude that the First Amendment right must prevail. Appellants urge that a similar evaluation will compel this court to reach the same conclusion.

POINT III

THE PEOPLE FAILED TO PROVE THAT THE DEFENDANTS WERE GUILTY OF DISORDERLY CONDUCT.

Appellants feel so strongly about the total paucity of any proof of disorderly conduct, as demonstrated in the Statement of Facts, supra, pages 4 to 11, that any further review of the facts would be redundant.

The latest of a series of relevant decisions by the New York Court of Appeals, People v. Carcel, 165 N.Y.S. 2d 113 (1957) states the established law on this question:

> "...the courts have indicated that something more than a mere inconvenience of pedestrians is required to support a conviction under subdivision 2 ...there is absolutely no showing either that defendants caused any serious annoyances to pedestrians or that their manner was threatening or abusive. Indeed the only evidence upon which the conviction might be predicated is the arresting officer's simple statement that the 'defendants were blocking the pedestrians right of way'. That evidence we hold to be insufficient...."

The Court of Appeals then cited many cases including People v. Nixson, 248 N.Y. 182 (1928). In Nixson, there was testimony that "The obstruction caused by the pickets was such that some people were caused to enter the roadway to pass." (Id., at 185), this being the strongest evidence which the prosecution presented. Significantly, this was the very complaint, and indeed, the maximum complaint, that Capt. Monahan and Sgt. Moore could make against the defendants here. A police officer's opinion as to the possibility of a breach of the peace occurring can hardly be taken as conclusive proof, People v. Trumbul, 63 N.Y.S.2d 720 (Magis. Ct., Qns. Cty., 1st Dept. 1946).

Of course, there can be no disorderly conduct without a breach of the peace being threatened, either subjectively (i.e., intended) or objectively (i.e., may be occasioned). And not only our own State courts, but the Supreme Court of the United States has held that a liklihood of the breach of the peace is negatived by the presence of police officers in sufficient numbers as was certainly the case here. See Edwards v. South Carolina, supra, at page 233; People v. DeStefanis, 34 N.Y.S. 2d 52 (City Ct. of Utica, 1942) ("...the presence of the police made such a breach of the peace extremely remote, if not impossible...")

POINT IV

SINCE THERE IS NO EVIDENCE OF DISORDERLY CONDUCT SUFFICIENT TO SUSTAIN A CONVICTION, THE COURT BELOW MUST HAVE ERRONEOUSLY ASSUMED THE DEFENDANTS TO BE GUILTY OF DISORDERLY CONDUCT MERELY FROM THE FACT THAT THEIR PICKETING OCCURRED ON WHAT THE COURT HELD TO BE PRIVATE PROPERTY. SUCH A HOLDING IS ERRONEOUS AND MUST BE REVERSED.

Although Judge Balbach did not say so in so many words, inasmuch as he did not render an opinion or make any observations for the record in the course of finding the defendants guilty of disorderly conduct, it is probable that the findings of guilt were based exclusively on the fact that he had previously ruled that the World's Fair was private property.

It is defendants' contention that such a holding is erroneous, ab initio. Disorderly conduct is a crime, all of the elements of which must be proved in and of themselves. No short-cuts are constitutionally permitted. In People v. Swald, 72 N.Y.S. 2d 399 (City Ct. of Utica, 1947) a taxi driver who was soliciting passengers on New York Central Railroad property, presumably without authorization, was arrested for disorderly conduct, the principal element of which was his trespassing on private property. Although the court held that there might possibly be a violation of Section 2036, the disorderly conduct charge was dismissed, the court holding:

> "There is an increasing tendency to employ Section 722 whenever it is determined a person should be arrested. This should not be countenanced by the courts."

Accord: People v. Goldstein, 268 N.Y.S. 50 (Sp. Sess., App. Pt., 1st Dept. 1933) where conviction of disorderly conduct for peddling newspapers in a subway train was reversed, the court holding that whatever property rights the subway system owner (then private) had "... this right cannot be enforced by an arrest on the charge of disorderly conduct where no other facts but the mere selling of papers had been proven." (Id. at 51)

In People v. Donegan, 191 N.Y. S. 2d 701 (Sp. Sess., App. Pt., 1st Dept. 1959) an injunction had been issued by a Supreme Court Justice, restraining certain picketing in or about the facilities of the New York City Transit Authority. The defendant was the wife of an officer of a union of Transit Authority employees which was not actually on strike, but some of whose members were acting in sympathy with the Transport Workers Union, which was striking. While the defendant was peacefully picketing, she was arrested and charged with disorderly conduct. It is clear that the real reason she was arrested was because of some vague belief on the part of the arresting officers that she was violating the court injunction. But not being certain of the ability to prove a case of contempt of a Supreme Court injunction, the police officers took the easy way out and arrested her for disorderly conduct. The conviction was reversed.

Similarly in this case, not being sure whether or not a constitutional arrest was made under Section 2036, the complaining Pinkerton officer and his legal adviser also swore out a complaint on grounds of disorderly conduct. Obviously, the disorderly conduct arrest here was no less specious than in Donegan, supra.

Judge Dubin, on sentencing, observed that what the defendants did would have been perfectly permissible peaceful picketing if it were conducted on Queens Boulevard or on Broadway. If it could not have been disorderly conduct on Broadway or Queens Boulevard, what made it disorderly conduct inside the gates of the World's Fair? Only Judge Balbach's erroneous conclusion that the private property factor itself rendered disorderly that which otherwise would not be disorderly.

POINT V

THE COURT ERRED IN NOT ALLOWING THE DEMURRER.

The legal principles pursuant to which the demurrer should have been allowed are set forth in the various points of this brief, *supra*. A demurrer was a proper method of testing the legal and constitutional sufficiency of the criminal charges against these defendants. See *People v. Richmond County News Co.*, 167 N.Y.S. 2d 406 (Sp. Sess., Rchmd. Co. 1957); *People v. Peck*, 112 N.Y.S. 2d 379 (Monroe Co. Ct., 1952); *People v. Sabatino*, 216 N.Y.S. 2d 276 (Qns Co., 1961); *People* v. *Leiby*, 52 N.Y.S. 2d 493 (City Ct. of Utica, 1945).

CONCLUSION

This appeal is being submitted at a time when the nation, and indeed the entire civilized world, has been traumatized by events in certain parts of the country. In the State of Mississippi; in the State of Florida, and elsewhere the right to peacefully assemble, to communicate ideas, to seek to persuade others, is being savagely repressed to an extent that most Americans would have thought impossible in our country in the year 1964. As much at stake in the current civil rights crisis as the goal of eliminating racial inequality, is the preservation of the means for its peaceful implementation: the constitutional guarantee of freedom of expression.

Perhaps all that can be hoped for in Mississippi and Florida is that freedom of speech be protected by the powers of government, albeit grudgingly. But surely the citizens of New York have a right to expect that the values enshrined in the First Amendment will be cherished and endorsed in this State. Freedom of speech is not to be merely tolerated wherever necessary. Its widest possible application should be encouraged.

It is disheartening that those persons who set the policy of the Fair Corporation apparently take a much less benign view. Their attitude, expressed in the brief and oral argument below, is rather that free speech is a chore, a bother, a sometimes necessary burden to be borne, but certainly not within the Fair grounds. They appear to be greatly dismayed at the prospect that members of the public on the sidewalks of the Fair, may try to communicate ideas to other members of the public, just as they may freely do on any other sidewalks. This astigmatic attitude towards freedom of expression is evidenced most sharply by the following excerpt from the Fair Corporation's brief below:

> If the Court upholds the absolute right of defendants to picket within the Fair site, then by the same token, the same right must be extended to everyone who wishes to picket on any street, sidewalk or roadway within the Fair grounds. Organizations and individuals, whether opposed or in favor of religion, disarmament, birth control, medicare and the many other controversial types of legislation, would claim discrimination if the same privilege was not accorded to them. The extension of such right or privilege to all who seek to exercise it would create chaotic conditions, impose upon the Fair Corporation serious policing problems of safety and order, change the whole atmosphere and impair the carrying out of the principal purpose and objectives of the Fair." (at p. 3b)

What kind of a World's Fair is it whose "atmosphere" will be "impaired" by permitting free speech? A fitting response to this notion that it is unseemly or improper behavior for American citizens on a public thoroughfare to discuss and communicate concerning these topic calls for the special talents of a satirist. Isn't it simply awful that people should want to talk about such controversial things! No controversy permitted at the World's Fair, only smiles! Extravaganzas; yes; ideas no!

But whether or not the powers that be at the World's Fair, either by themselves or in response to public opinion, will undertake a reappraisal of this attitude, the constitutional imperative is clear. The United States Supreme Court held, in Hague v. C.I.O., 307 U.S. 496 (1939), a case which administered a rebuke to one who bore the sobriquet "I am the law", and attempted to prevent a peaceful discussion by labor organizers in Jersey City:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens."

Appellants respectfully urge that this Court declare that the law governing the right to peacefully picket on the sidewalks of the World's Fair is not that of one man, or any group of men, but the law of the First Amendment to the United States Constitution. The convictions should be reversed, the complaints dismissed, and the demurrer allowed.

Respectfully submitted

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, N. Y.
Attorney for Defendants

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue
New York 10, N.Y.
Co-counsel for Defendants

Of Counsel:

MELVIN L. WULF
c/o American Civil Liberties Union
156 Fifth Avenue
New York 10, N.Y.

CARL RACHLIN
c/o Congress of Racial Equality
38 Park Row
New York, N.Y.

NANETTE DEMBITZ
c/o New York Civil Liberties
Union
156 Fifth Avenue
New York 10, N.Y.

GEORGE SCHIFFER
40 East 49th Street
New York 17, N.Y.

Date: June, 1964

To be submitted by
MARVIN M. KARPATKIN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : SECOND DEPARTMENT

---X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES and DORIS RUTLEDGE,

Defendants-Appellants.

---X

REPLY BRIEF OF DEFENDANTS-APPELLANTS

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York 21, New York
Attorney for Defendants

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue
New York 10, New York
Co-counsel for Defendants

SUMMARY OF ARGUMENT

POINT I

THE DECISION OF THE UNITED STATES DISTRICT COURT IN FARMER V. MOSES, WHICH EXPRESSLY FOUND THAT THE WORLD'S FAIR WAS NOT PRIVATE PROPERTY, SUPPORTS DEFENDANTS' CONTENTION THAT THEIR PEACEFUL PICKETING ON THE SIDEWALK IN FRONT OF THE FLORIDA PAVILION WAS NOT CRIMINAL.

POINT II

THE CASES CITED BY THE FAIR CORPORATION, WHICH ALLOWED RESTRAINTS ON PICKETING, ALL REFER SPECIFICALLY TO INDUSTRIAL RELATIONS PROBLEMS INVOLVING EITHER A CLASH OF ECONOMIC INTERESTS, ATTEMPTED COERCION, OR MANIFESTLY ILLEGAL OBJECTIVES. IN SOME OF THOSE SITUATIONS PICKETING WAS HELD TO BE A "HYBRID" CONSISTING OF OTHERWISE PERMISSIBLE FREE SPEECH PLUS NON-FREE SPEECH ELEMENTS. IN THE INSTANT CASE, HOWEVER, THERE IS NO "HYBRID" PROBLEM. THE ONLY CLASH IS BETWEEN THE FAIR'S PROPERTY RIGHTS, AND THE DEFENDANTS' FIRST AMENDMENT RIGHTS.

POINT III

THERE IS NO EVIDENCE SUFFICIENT TO FIND THE DEFENDANTS GUILTY OF DISORDERLY CONDUCT INDEPENDENT OF THE ERRORNEOUS ASSUMPTION BY THE TRIAL COURT THAT THE MERE PICKETING ON WHAT WAS HELD TO BE PRIVATE PROPERTY WAS DISORDERLY CONDUCT IN AND OF ITSELF. THE ATTEMPTED FACTUAL AND LEGAL DISTINCTIONS SET FORTH IN POINT I OF THE FAIR CORPORATION'S BRIEF ARE COMPLETELY WITHOUT SUBSTANCE.

POINT IV

THE ATTEMPTS TO DISTINGUISH SIDEWALKS AND THOROUGHFARES WITHIN THE GATES OF THE WORLD'S FAIR FROM SIDEWALKS AND THOROUGHFARES OUTSIDE OF THE GATES ARE SPECIOUS.

POINT V

THE OTHER CASES CITED BY THE FAIR CORPORATION ARE INAPPLICABLE TO THE FACTS OR THE LAW OF THIS CASE.

POINT VI

THE FAIR CORPORATION'S SUGGESTION THAT DEFENDANTS CONFINE THEIR PICKETING TO THE CITY STREETS OUTSIDE OF THE FAIR GATES IS BOTH IRRELEVANT TO THE QUESTION BEFORE THIS COURT AND INCONSISTENT WITH DEFENDANTS' CONSTITUTIONAL RIGHTS.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : SECOND DEPARTMENT
---X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

BETTY COLLINS, CAROL LUSTGARTEN, SHERRY
NOYES and DORIS RUTLEDGE,

Defendants-Appellants.

---X

REPLY BRIEF OF DEFENDANTS-APPELLANTS

POINT I

THE DECISION OF THE UNITED STATES DISTRICT COURT IN FARMER V. MOSES, WHICH EXPRESSLY FOUND THAT THE WORLD'S FAIR WAS NOT PRIVATE PROPERTY, SUPPORTS DEFENDANTS' CONTENTION THAT THEIR PEACEFUL PICKETING ON THE SIDEWALK IN FRONT OF THE FLORIDA PAVILION WAS NOT CRIMINAL.

In answer to the essential question in this case, whether the World's Fair is private property or something other than private, appellants urged in their original brief, that private status was "absolutely foreclosed by an overwhelming aggregation of incidents and expressions of official governmental action... [and that] The power, property and prestige of government is behind and intertwined with the Fair to an extraordinary degree". As proof thereof there was then delineated for the Court some

17 indicia of such governmental intertwining, all based on statutes, ordinances, the World's Fair lease or other matters of official notice (original brief, pp. 16 to 21).

It was most gratifying therefore that United States District Judge Harold R. Tyler, Jr., in his decision of June 30, 1964, in the case of James Farmer, et al v. Robert Moses, et ano, S.D.N.Y. 64 Civ. 1666, reached a virtually identical conclusion concerning the non-private status of the Fair, based on a strikingly similar review of the various indicia of government involvement. (see pp. 5 to 11, 19 to 21 of Judge Tyler's opinion).

After Judge Tyler reviewed and commented upon much of the same material as appeared in defendants' 17 points, he concluded, at page 14 of his opinion:

> "Upon analysis of the foregoing facts, I find that the Fair Corporation and its operations are so impregnated with and supported by state and city action as to place them within the ambit of the Fourteenth Amendment. This is so even though it may be reasonably inferred that the Fair Corporation does possess certain indicia and aspects of 'private' ownership and dominion."

Then on page 15, Judge Tyler reiterated:

> "Upon the uncontested facts here, it would be sophistry to argue or conclude that the Fair is a completely private venture, even though it is operated by a private corporation."

He then cited the unanimous decision of the Appellate Division of this Department in Froslid v. Hults, 248 N.Y.S. 2d 676 (2d Dept. 1964) "the automobile license case", where it was held "that the Fair is a matter of public concern, for the public good, and for the general welfare of the state."

Again, on page 16, Judge Tyler observes, concerning the educational function of the Fair:

> "Educating the populace is a proper function of the state, and where the state creates separate instrumentalities to carry on its work, the latter may become subject to the constitutional restraints imposed upon the state itself. See Kerr v. Enoch Pratt Free Library of Baltimore City, 149 F. 2d 212 (4th Cir.), cert den. 326 U.S. 721 (1945)."

Continuing on page 17 of his opinion, Judge Tyler wrote:

> "The federal courts have recognized that when a city or state leases public property in such a manner and for such purposes wherein services of a kind that the city or state could render or has rendered are actually performed by a 'private' lessee, the letter stands in the shoes of the government entity, [citing cases]".

Finally, Judge Tyler summed up his evaluation of the Fair's status on the private-public spectrum as follows:

> "It seems inescapable, therefore, that the State and City of New York, with all propriety and by specific executive and legislative fiat, have significantly contributed, and continues so to do, to the control and operation of the 1964-1965 World's Fair. If this

> be so, it follows that, at least for certain purposes, the Fair is a public or quasi-public venture and, that its officers and agents cannot ignore the constitutional rights of those members of the public who use and enjoy the Fair facilities.[2]" (Emphasis added) (Footnote in original)

Directly in point is Judge Tyler's footnote #2, which reads as follows:

> "[2] In so saying, this court is aware of a decision of the Criminal Court of the City of New York, Queens County, People v. Collins, et al, decided June 11, 1964, wherein it was held, inter alia, that the Fair grounds are private property. Assuming that I have correctly interpreted the holding to this extent, I cannot entirely agree with it."

This finding having been made, that the Fair is "a public or quasi-public venture", Judge Tyler then ruled that although plaintiffs were not entitled to broad injunctive relief which would guarantee them, without limitation and without condition, the right of general picketing at the Fair, they were entitled to an order permitting dissemination of handbills. Judge Tyler was very careful to make clear the limited nature of his response to the prayer for equitable relief enjoining the defendants from preventing picketing. Thus, on page 25:

> "I conclude that plaintiffs have not established that they are entitled to a temporary injunction allowing them to picket before or near the places desired within the Fair grounds." (Emphasis added)

What the court did was deny the broad equitable relief sought by a general injunction, pointing out at the same time, on page 29:

> "...the remarks of this court cannot be interpreted to preclude picketing by other groups under other circumstances."

And to drive home this point the court expressly invalidated the Fair's regulation, which purported to bar all picketing. Judge Tyler held, at pages 29 and 30:

> "As drafted and as construed by the defendants in this instance, it is arbitrary and vague and, as such, an unconstitutional burden on the enjoyment of free speech. Reasonable standards can be promulgated so that those who administer the regulation may not have totally unfettered discretion to determine whether to grant or withhold permission to picket and speak and disseminate informational literature."

The following can fairly be concluded from Judge Tyler's careful and extensive opinion and holding:

1) The Fair is not private. It is either public or quasi-public.

2) The United States District Court has expressly disagreed with Judge Balbach's finding in this case that the Fair is private property.

3) The request for an injunctive order authorizing blanket picketing was denied.

4) The Fair's regulation barring any picketing was invalidated.

5) Reasonable picketing must be permitted.

There are plainly two distinctions which must be made between Farmer v. Moses and this case:

1) Farmer v. Moses was an application for a mandatory injunction on the part of petitioners therein and all other persons similarly situated. It sought the hand of equity to affirmatively intervene in its behalf. The burden of proof was on petitioners, and indeed, a greater burden of proof than would be the case in an ordinary civil case, inasmuch as it was an application to invoke the equitable discretion of the chancellor.

On the other hand, the instant case presents four defendants who have been convicted of crimes and subjected to criminal records and criminal penalties. Not only is the burden of proof reversed, but the quantum of proof, i.e., the necessity of proving their guilt beyond a reasonable doubt, is infinitely greater. Consequently, it is simply wrong as a matter of law for the Fair Corporation to state that the refusal of Judge Tyler to grant a pro-picketing mandatory injunction requires an affirmance of the convictions herein. Indeed, by his language, Judge Tyler indicated that a mandatory injunction under other circumstances might well be granted. He merely held that in the case before him the plaintiffs had not established that they were entitled to injunctive relief.

2) The second distinction is more implicit than explicit. The petitioners in Farmer v. Moses sought an injunction allowing general unlimited picketing. There was no specification of the number of persons who desired to picket or of many other possibly relevant factors. The Fair Corporation, in its opposition to the motion for a preliminary injunction before Judge Tyler (see Poletti affidavit, ¶¶50 to 61, referred to in the record herein), made much of the demonstrations which occurred at the Fair on opening day.

But the instant case only involves four college girls from Florida, not on opening day, walking in a single file, not blocking anyone, and not causing any disturbance whatsoever. This is vastly different from any judicial anticipation of or anxiety concerning thousands of pickets headed by the distinguished National Director of the Congress Of Racial Equality (the principal plaintiff in Farmer v. Moses) associated with the recollections of the turmoils of opening day.

To sum up, Judge Balbach held that the Fair was private and the convictions of trespass and disorderly conduct based on the acts occurring on private property followed directly therefrom. Judge Tyler, on the same facts, has expressly disagreed. There is no question but that if the criminal case were before Judge Tyler, he could not have found the defendants guilty. Defendants respectfully urge this appellate court to similarly conclude that the World's Fair is not private property, and therefore, the convictions herein must be reversed.

POINT II

THE CASES CITED BY THE FAIR CORPORATION, WHICH ALLOWED RESTRAINTS ON PICKETING, ALL REFER SPECIFICALLY TO INDUSTRIAL RELATIONS PROBLEMS INVOLVING EITHER A CLASH OF ECONOMIC INTERESTS, ATTEMPTED COERCION, OR MANIFESTLY ILLEGAL OBJECTIVES. IN SOME OF THOSE SITUATIONS PICKETING WAS HELD TO BE A "HYBRID" CONSISTING OF OTHERWISE PERMISSIBLE FREE SPEECH PLUS NON-FREE SPEECH ELEMENTS. IN THE INSTANT CASE, HOWEVER, THERE IS NO "HYBRID" PROBLEM. THE ONLY CLASH IS BETWEEN THE FAIR'S PROPERTY RIGHTS, AND THE DEFENDANTS' FIRST AMENDMENT RIGHTS.

The Fair Corporation, in its amicus brief, seriously contests whether defendants' freedom of speech has truly been denied. In support of their argument they cite Hughes v. Superior Court, 339 U.S. 460 (1950) and International Brotherhood v. Hanke, 339 U.S. 470 (1950). It is of paramount importance that these and other cases be distinguished from the instant case, where there was no labor controversy and no coercion whatsoever, economic or otherwise. We need not argue that there is an unqualified right to engage in peaceful picketing to show that the convictions of these four defendants must be reversed, though the Supreme Court, in a recent per curiam decision, Chauffer's Union #795 v. Newell, 356 U.S. 341 (1958) reversing 181 Kan. 898, 182 Kan. 205, had reiterated the principles of Thornhill v. Alabama, 310 U.S. 88 (1940). What must be fully understood, however, is that in this case many of the conflicting policy arguments common to such cases are inapposite. This is because the instant case is uncomplicated by the all-important considerations of industrial and labor relations which have been developed in the decisions following the landmark decision of Thornhill v. Alabama, supra.

It was not until Senn v. Tile Layer's Union, 301 U.S. 468 (1936); Carlson v. California, 310 U.S. 106 (1940); A.F. of L. v. Swing, 312 U.S. 321 (1941) and Thornhill v. Alabama, supra, that picketing was no longer regarded as a tort, as it had been at common law. In sweeping language, the Supreme Court of the early 1940's elevated picketing to the status of constitutionally protected free speech.

Subsequent narrowing of the Thornhill doctrine was precipitated by a general aversion to labor controversies in toto; see Teller Picketing and Free Speech, 56 Harv. L. Rev. 180.

As there stated, the essence of picketing is a "labor activity carried on in furtherance of a plan to impede the picketed person's opportunity to enjoy a free and open market," (Id. at 202). It was this form of picketing alone that was differentiated from the classical notion of free speech. Thus, only when picketing was regarded as a form of economic action was it proper to balance this right against the right of private property. This, in essence, was the clash of two property interests, whereas the instant case pits a property interest against the right of free speech. As has been previously shown, such conflict must be resolved in favor of speech; Marsh v. Alabama, 326 U.S. 501 (1946).

The Fair Corporation's brief refers to picketing as a "hybrid" right (p. 38). But it was in an economic context that picketing was described as a "hybrid, comprising elements of persuasion, information, and publicity, together with elements of non-verbal conduct, economic pressure and signals for action". (Emphasis added) Freund On Understanding the Supreme Court 18, (1949).

It is vital, then, to distinguish the purely informational, non-violent, non-coercive, and non-economic picketing at the World's Fair from the kind discussed in cases cited by the Fair Corporation. Even the excerpt from the Hughes case cited therein at page 41, refers to "industrial picketing".

Just as the Supreme Court allowed the states to balance competing economic interests in Milk Wagon Driver's Union v. Meadowmoor Dairies, 312 U.S. 287 (1940); International Brotherhood v. Hanke, supra; and Carpenters Union v. Ritter's Cafe, 315 U.S. 769 (1941), they permitted injunctions where the object sought was unlawful or counter to a valid state policy, Hughes v. Superior Court, supra; Building Service Employees v. Gazzam, 339 U.S. 532 (1950); and Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949).

However, this logic is not applicable to picketing which does not urge visitors to by-pass the Florida Pavilion. The goal of the four girls was to present the whole story, tragic though it might be, of the State of Florida to those who desired to enter the Pavilion. As stated by Justice Frankfurter in Teamster's Union v. Vogt, Inc., 359 U.S. 289 (1959):

> "The mere fact that there is picketing does not automatically justify its restraint without an investigation into its conduct and purposes."

In presenting information about racial segregation in the South, the goals and purposes of these picketers were of the highest order; and in no way were they coercive.

Several recent cases have reiterated the right to picket in a non-labor context, indicating the wide scope that is afforded, and properly so, this form of communication. See Flores v. Denver, 122 Colo. 71 (1950) (vociferous chanting at the home of the Governor); Allen v. District of Columbia, 187 A. 2d 888 (1963) (dragging a "red" flag in front of the White House gate); 1621, Inc. v. Wilson, 402 Pa. 94 (1960) (objections to establishment of a local taproom by neighborhood residents). See also People v. Carcel, People v. Kieran, and other New York cases allowing non-labor peaceful picketing, cited below. In all of these cases, the means employed were far in excess of those of these defendants at the World's Fair. Even the Supreme Court of South Carolina has reversed convictions for picketing in protest of racial discrimination, Sumter v. Lewis, 241 S.C. 364 (1962).

It is apparent that the arguments elicited from the many cases cited by both the People and the Fair Corporation apply only to labor situations, where the state is entitled to balance the opposing economic interests in an effort to arrive at a tenable policy on labor matters. In picketing the Florida Pavilion there was no economic coercion of any kind. Neither was there violence, either actual or threatened, which could justify arresting these girls for disorderly conduct. In purely informational picketing, only the means employed (if violent or abusive) or the objects involved (if they are unlawful or counter to public policy) may justify interference by the state. In the case at hand, both the means and the ends were beyond reproach. The cited decisions can have no bearing whatsoever on this case, since the picketing in those cases is invalid for one of three reasons:

1) There was economic coercion.
2) The means used were improper.
3) The ends sought were unlawful.

Since none of these elements is present in this case, since this case presents a pure First Amendment question without any of the countervailing considerations, we urge that this picketing cannot be condemned as criminal, and the convictions must be reversed.

In the words of Mr. Justice Hofstadter, sitting at Special Term in Supreme Court, Bronx County, as early as 1934, in a case where injunctive relief against picketers was denied:

> "The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not proscribed in any well-ordered society...Picketing is an essential prerogative of free men living under democratic institutions, and is salutory for the state in that it serves as a safety valve in times of stress and strain."
> Julie Baking Co. v. Graymond, 274 N.Y.S. 250 (1934)

POINT III

THERE IS NO EVIDENCE SUFFICIENT TO FIND THE DEFENDANTS GUILTY OF DISORDERLY CONDUCT INDEPENDENT OF THE ERRONEOUS ASSUMPTION BY THE TRIAL COURT THAT THE MERE PICKETING ON WHAT WAS HELD TO BE PRIVATE PROPERTY WAS DISORDERLY CONDUCT IN AND OF ITSELF. THE ATTEMPTED FACTUAL AND LEGAL DISTINCTIONS SET FORTH IN POINT I OF THE FAIR CORPORATION'S BRIEF ARE COMPLETELY WITHOUT SUBSTANCE.

There are at least three instances where ostensible statements of fact in the Fair Corporation's brief are grossly distorted or utterly beside the point:

1) In an attempt to make the "crowd" look as large as possible and thereby try to sustain the Section 722(4) conviction, there are several references to the size of the crowd as "30 to 50" (see p. 11). Yet, as pointed out in the Statement of Facts of defendants' original brief, the original testimony by Capt. Monahan, the principal witness for the prosecution, was that the number was 30 to 40, and when he was confronted on cross-examination with the fact that this 30 to 40 consisted exclusively of World's Fair police and reporters, he changed his testimony so that his crowd estimate grew from "30 to 40" to "30 to "50" (see references to record in original brief, pp. 8 and 9). The People's brief is commendably candid in indicating this confusion in the prosecution's testimony. (See People's brief, pp. 3 and 22, where the testimony of Capt. Monahan is digested to the effect that the crowd at its maximum was 30 or 40). The

desperate attempt on the part of the Fair Corporation to save the conviction by making the crowd 25% larger than it really was will certainly not escape the attention of this Court.

2) In a similar attempt to save the Section 722(2) conviction, the Fair Corporation's brief refers several times to the fact that complaints concerning the pickets were made by "at least one couple" (see pp. 10 and 11). The use of the phrase "at least one couple" is obviously intended to suggest a greater number. But in fact, the only complaint which either Capt. Monahan or Sgt. Moore was able to recall, was the one alleged statement (testified to by Capt. Monahan) by one man, totally unspecified, unidentified and uncorroborated.

3) A final desperate attempt to buttress the 722(4) charge is the reference in the Fair Corporation's brief to Capt. Monahan's testimony that "A girl at the Florida orange stand was heard to say 'It looks like we are not going to have much business today' " (p. 4). It is most depressing that this kind of completely irrelevant and incompetent hearsay speculation should be seriously offered as proof of disorderly conduct in a brief presented in an appellate court.

The Fair Corporation's attempts to distinguish two Court of Appeals decisions, cited by defendants in the original brief, are equally meritless. In People v. Nixson, 248 N.Y. 182 (1928) the disorderly conduct conviction was reversed by the Court of Appeals where the pickets, some twenty in number, were parading four abreast on a sidewalk 12 feet wide on a busy street in the fur market. Traffic was clearly affected, and "some persons were 'caused' to enter the roadway". The Court analyzed different situations affecting the several defendants and concluded that because of the peculiar facts, four of the convictions should be sustained, but 16 others reversed. Nevertheless, the four abreast parading and the effect upon vehicular and pedestrian traffic was identical. Yet the Fair Corporation would have this Court believe that the instant case, where four girls in a single file were walking on a 14 foot wide sidewalk, is stronger for a conviction than Nixson.

Even more fantastic is the Fair Corporation's attempt to distinguish People v. Carcel, 3 N.Y. 2d 327 (1957). The Carcel case is described on page 11 of the Fair Corporation's brief as involving two pickets "on a public street causing no interference with the pedestrians or the congregation of any crowd." The apparent inference here is that there was no testimony of interference or congregation. Yet the following appears at pages 330 and 331 of the opinion:

> "The material facts were virtually undisputed. The arresting officer, witness for the People, testified ...according to the officer 'quite a few people came over to the entrance' and the defendants 'were blocking the pedestrians' right of way' ".

The Court of Appeals found that as a matter of law these acts did not constitute such interference with others as would amount to disorderly conduct. But this was the court's legal conclusion after reviewing the police officer's testimony that pedestrians were in fact interfered with. That the Fair Corporation should so misread and miscite the Carcel case by inferring that there was no testimony of interference with pedestrians, when in fact there was, comes perilously close to an attempt to deceive this Court.

In Carcel, after analyzing this testimony, the court made the now classic finding that "something more than a mere inconvenience of pedestrians is required to support a conviction under subdivision 2". We respectfully submit that if the defendants did what they did on Times Square, or Queens Boulevard, the Criminal Court would have been obliged to find that there was no disorderly conduct under the rule of People v. Carcel, supra. We urge that this appellate court must similarly find in this case.

That peaceful picketing on a public sidewalk cannot constitute disorderly conduct under Section 722(4), notwithstanding the fact that the picketing attracts an assemblage of persons is the holding of People v. Kieran, 26 N.Y.S. 2d 291 (Nassau Co. Ct. 1940). In Kieran it was held that although an assemblage of persons gathered about the Jehovah's Witnesses who were picketing on the sidewalks of the City of Long Beach, this was simply not adequate evidence to sustain the conviction under §722(4):

> "To sustain a conviction under that subdivision, there must be some evidence that the defendants did collect a crowd. A crowd is a throng, a great number of persons, a multitude....[citing People v. Phillips, 245 N.Y. 401 (1927)]...There was in my opinion 'no crowd' within the meaning of the statute as defined in People v. Phillips, supra. There were spectators, to be sure, for there was curiosity to be satisfied, as was natural." (Id. at 304, 309)

Plainly such persons as collected in the vicinity of the defendants' picket line were either police officers or reporters, and not that kind of "multitude" as is necessary to support a conviction under §722(4).

People v. Phillips is instructive for another reason:

> "...the conviction is not based upon the evidence [of collection of a crowd]. It seems to rest upon the erroneous idea expressed by the Magistrate that 'if there is no strike and he is marching up and down outside his place of business, he is guilty of disorderly conduct'."

We respectfully suggest that just as the Court of Appeals reversed in Phillips because of the Magistrate's erroneous labeling as disorderly conduct the picketing which he mistakenly believed to be unlawful, so must this appellate court reverse the convictions of disorderly conduct which are based on nothing more than the erroneous conclusion that the World's Fair is private property.

POINT IV

THE ATTEMPTS TO DISTINGUISH SIDEWALKS AND THOROUGHFARES WITHIN THE GATES OF THE WORLD'S FAIR FROM SIDEWALKS AND THOROUGHFARES OUTSIDE OF THE GATES ARE SPECIOUS.

Most of this argument is contained in Point III of the Fair Corporation's brief. Several times over the analogy is pressed that there is no legal difference between the sidewalks within the Fair, and the corridors within an enclosed structure, such as, the Coliseum or Madison Square Garden. This attempted equation is so transparent that it can be dispensed with very quickly. The essence of defendants' argument, based on Marsh v. Alabama, supra, and Hague v. C.I.O., 307 U.S. 496 (1939) is the special character of thoroughfares on which the public is free to traverse whether they be called sidewalks, roadways, walkways, streets, avenues, boulevards, concourses, or the like. It is insulting the intelligence of this Court to suggest that there is no distinction between a 14-foot wide sidewalk, (no different in any respect unless it is perhaps wider than any other New York City sidewalk) and a much narrower enclosed corridor inside a building. This precise distinction was made by the Court of Appeals in the Parkchester case, Watchtower Bible and Tract Society v. Metropolitan Life Insurance Company, 297 N.Y. 339 (1948). [The Fair Corporation's brief, on page 51, suggests that defendants' original brief misconstrued the Parkchester case when we stated that the court found a constitutional difference between, on the one hand, the narrow corridors of the upper floors of a privately-owned apartment house in the Parkchester residential community, and on the other, the same privately-owned streets and walkways between the houses on the ground level. Defendants are confident that this Court will read the Parkchester case and form its own conclusions as to whether or not the Court of Appeals has made this distinction].

Even more tenuous is the attempt to suggest that the thoroughfares of the World's Fair are no different from the lanes and paths of one's garden (p. 26). This is so ridiculous that no comment is necessary.

Reference is also made to the requirement that automobiles be removed from the World's Fair parking lot at 2:00 a.m., in an attempt to graft a reductio ad absurdum onto appellant's argument (p. 31). But as much as they would like to, the Fair Corporation's attorneys cannot so easily set up a straw man and knock him down. Appellants are claiming no more rights in the World's Fair parking lot than in any New York City municipally-owned parking lot anywhere else in the City.

The essential distinction which the Fair Corporation has tried to obliterate in every one of its presentations to this and other courts, is the distinction between a street, a public outside thoroughfare, a place where pedestrians have walked, promenaded, and congregated (as the Supreme Court said in Hague v. C.I.O., supra, "from time immemorial") and a passageway in an enclosed edifice.

Another argument on this score which is vigorously pressed in the Fair Corporation's brief concerns the congregation of large numbers of people. Let us analyze exactly what is claimed here. The Fair grounds constitute 646 acres, which is slightly more than one square mile. In terms of city blocks, one mile is roughly equivalent to twenty blocks. Such an area of one square mile would be approximately the same as an enormous square in the center of Manhattan Island bounded by 34th Street and 14th Street on the north and south, and Second and Eighth Avenues on the east and west. This vast expanse encompasses Union Square, Madison Square and Herald Square. Another comparable area is that from 42nd Street to slightly north of Columbus Circle, including the entire Times Square and Grand Central areas -- virtually the heart of this City. Still another is that area from Chambers Street to the Battery, including the City Hall area, Wall Street and the entire financial district. In fact, a moment's consideration will reveal that there are very few days indeed when the population density and the congregation of visitors to the Fair is greater than that at Union Square at lunch hour, at Columbus Circle at 5:00 p.m., or at Times Square at virtually any time. It is common knowledge that both labor and non-labor picket lines are frequently in evidence at all of these vital locations, and that the New York City police are quite capable of preventing any disorder from occurring.

A further argument made by the Fair Corporation is that visitors to the Fair are, in effect, rendered a captive audience to the message of pickets. This argument is made on pages 35 and 36, and is answered most effectively by Judge Tyler in Farmer v. Moses, supra, on pages 28 and 29:

> "Contrary to defendants' arguments, those of us who pay the regular admission fee and attend the Fair cannot be totally insulated from our fellows, nor can we expect to be shielded from expressions or ideas which are unanticipated and unsolicited. An individual's right of privacy is of practical necessity limited by the rights of others when he leaves his home and ventures forth into public areas, even those which he must pay to enter. See Public Utilities Commission v. Pollak, 343 U.S. 451 (1952)."

Do World's Fair visitors, lined up outside the General Motors building, for example, have any greater "right" to be spared the unpleasant controversial sight of a picket line criticizing the corporation for discriminatory hiring policies, than tourists lined up in front of the Radio City Music Hall confronted with a picket line opposing the exhibition of a film believed to be obscene?

The final argument on this score is an attempt to create a distinction based on the payment of an admission charge at the Fair. This is fully discussed in Point I of appellants' brief at pages 22, et seq.

Appellants also refer the Court to several unreported decisions by New York City Magistrate Anna M. Kross (now New York City Commissioner of Correction) in cases involving labor picketing on subway platforms. The pickets were invariably charged with disorderly conduct. In all of these cases, decided at various times in the late 1930's and early 1940's, Judge Kross held that the fact of the payment of a subway admission fee did not make the slightest difference in the legal status of the pickets. Whether they were or were not guilty depended on the intrinsic facts of their behavior. It did not depend on which side of the turnstile they were on. It likewise did not depend on whether or not an admission fee was paid. (Conversations between defendants' counsel and Commissioner Kross, and between defendants' counsel and Samuel M. Sacher, Esq., attorney for the defendants in many of those cases). The meaninglessness of this distinction is further shown by the various shopping center parking lot cases cited in our original brief on page 35. In the case of the privately-owned parking lot in a shopping center, although the consideration paid by the patron might be in the form of a direct admission fee, there may also be parking meters, or other means whereby the effect is the same as an admission charge for persons who care to patronize the various facilities in the center. Yet it is consistently held, in applying the principles of Marsh v. Alabama, supra, that peaceful picketing is permitted on this species of private property, notwithstanding the payment of consideration from patron to proprietor.

POINT V

THE OTHER CASES CITED BY THE FAIR CORPORATION ARE INAPPLICABLE TO THE FACTS OR THE LAW OF THIS CASE

On pages 43 and 44, two decisions are cited, Scott v. District of Columbia and U.S. v. Aarons, both of which appear to stand for the proposition that reasonable restrictions can be made with respect to the time and place of picketing. However, the Scott case locale was the entrance gate to the White House, and that of the Aarons case was launching site of a nuclear powered Polaris submarine. Both of these situations involving high security considerations, cannot possibly stand as precedents for this case where no such factor exists.

As anticipated in our original brief, much is made of the decision of the New York City Magistrate upholding a disorderly conduct conviction of labor union pickets at the 1939 World's Fair, People v. Rozensweig, 13 N.Y.S. 2d 795 (1939), discussed in our original brief on page 24. No further elaboration would be necessary, were it not for the statement on page 29, of the Fair Corporation's brief that "upon familiar principles" the New York State Legislature must be deemed to have approved and accepted the holding in the Rozensweig case when it enacted the legislation dealing with the present Fair. To what "familiar principles" is the Fair Corporation referring? The apparent implication is the so-called "re-enactment maxim", even though the Fair Corporation does not so describe it in its brief. Perhaps the reason it is just implied rather than said, is that this maxim has absolutely no application here. The reenactment maxim only has application where an identical statute is reenatced by the Legislature following judicial construction of what was previously believed to be ambiguous. The only statute construed by the Magistrate in the Rozensweig case was the disorderly conduct statute, Sectin 722 of the Penal Law, not enabling legislation of the 1939 World's Fair. Furthermore, the United States Supreme Court has repeatedly declared that this maxim cannot be applied except in the clearest possible case, Girouard v. U.S., 328 U.S. 61, 67 (1945) ("It is at best treachery to find in Congressional silence alone the adoption of a controling rule of law").

The Fair Corporation includes the reference to the Sea Gate case in its quotation from the Magistrate's opinion in the Rozensweig case on page 28. The Sea Gate case, where an injunction against picketing within the privately owned residential community of Sea Gate in Brooklyn was granted is entitled to no stare decisis effect today, since this 1938 decision was bottomed on the fact that the picketing in Sea Gate was not in connection with a labor dispute. As the numerous cases cited in Point II of this reply brief indicate, it is unquestioned today that peaceful picketing of any kind is protected by the First Amendment, regardless of whether or not it is concerned with a labor dispute.

POINT VI

THE FAIR CORPORATION'S SUGGESTION THAT DEFENDANTS CONFINE THEIR PICKETING TO THE CITY STREETS OUTSIDE OF THE FAIR GATES IS BOTH IRRELEVANT TO THE QUESTION BEFORE THIS COURT AND INCONSISTENT WITH DEFENDANT' CONSTITUTIONAL RIGHTS.

On pages 38 and 39 of its brief, the Fair Corporation advances the notion that this whole unpleasant problem could be avoided had the defendants only stationed their picket line outside the Fair gates instead of inside. But this proposition has nothing to do with the question which has to be decided in this case: Are these defendants guilty of trespass and disorderly conduct? The fact that the Fair Corporation would have preferred that they picket outside the gates certainly does not mean that their decision to picket inside the gates makes them ipso facto guilty of some crime.

Whether or not they have a constitutional right to engage in peaceful picketing on the sidewalks within the Fair is in no way affected by the possibility that they might exercise their option at some other time to peacefully picket on sidewalks outside the gates. It is their constitutional right to exercise or not, at their discretion.

Finally, even if this constitutionally irrelevant suggestion were to be considered, it must be rejected as a matter of policy. The defendants' purpose in picketing was to convey certain information concerning the State of Florida to persons who were simultaneously in the process of receiving other information about the State of Florida. The constitutional right of peaceful picketing is intended to safeguard this right to choose the targets of one's communications on the public sidewalks and thoroughfares, subject only to reasonable regulations. The fact that one of the gates is only 100 feet from the Florida Pavilion is an interesting coincidence, but there is no showing that persons who visit the Florida Pavilion enter only through gate #5, nor any showing that all persons who enter through gate #5 will be visiting the Florida Pavilion. The right to peacefully picket within the World's Fair cannot be conditioned upon how close the picket site is to a gate.

In closing, the World's Fair can no more require peaceful pickets to stay outside of its gates than the city of New York could declare the entire area between Times Square and Columbus Circle to be quarantined against picketing and insist that any desire to picket, any of the motion picture theatres, the United Nations area, the Fifth Avenue shops, restaurants, or office buildings, must be confined outside of this "picket-rein"zone. No more, defendants contend, can the Fair Corporation declare that within its one square mile of territory all peaceful picketing will be suppressed.

CONCLUSION

The conviction should be reversed, the complaints dismissed, and the demurer allowed.

Respectfully submitted,

MARVIN MOSES KARPATKIN,
660 Madison Avenue,
New York 21, N.Y.
Attorney for Defendants

JANET ANN JOHNSON
c/o New York Civil Liberties Union
156 Fifth Avenue,
New York 10, N.Y.
Co-counsel for Defendants

Of Counsel:
MELVIN L. WULF
c/o American Civil Liberties Union
156 Fifth Avenue,
New York 10, N.Y.

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

COPY

May 19, 1964

MAY 20 REC'D

Hon. Frank D. O'Connor
District Attorney of Queens County
125-01 Queens Boulevard
Criminal Court Building
Kew Gardens 15, New York

ATTEN: Bernard M. Patten, Esq. - Room G-105

Re: People v. Lustgarten, etc.
Docket Nos. B2772 - B2779

Dear Sir:

In accordance with yesterday's telephone conversations with Mr. Patten, there is enclosed herewith original and copy of each of the following:

1) Defendants' demurrer to the informations and complaints herein.

2) Defendants' notice of motion, returnable May 25, 1964, as set by Judge Balbach for argument on motion to allow demurrer and dismiss complaints and informations.

3) Defendants' memorandum of law in support of demurrer and motion.

You have kindly consented to indicate an acknowledgment of service on your office on the originals and to arrange for proper filing with the Clerk of the Court, for which I thank you. I also thank you for your kindness in extending by one day the due date of the service of these papers, which had originally been set by Judge Balbach for May 18, 1964.

Needless to say, your time to serve any answering papers is correspondingly extended by one day.

Yours sincerely,

Marvin Moses Karpatkin

Marvin Moses Karpatkin per EB

MMK:eb
Encls.

cc: Carl Rachlin, Esq.
Miss Janet Ann Johnson

BY MESSENGER

COPY

4 Florida test cases ; Peaceful Picketting World's Fair!

JUN 10 1964

COPY

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

June 9, 1964

Hon. George Balbach
Criminal Court - Queens County
125-01 Queens Boulevard
Kew Gardens, New York

Re: People of the State of New York v. Betty
Collins, et al
Dockets B2772 - B2779

Dear Judge Balbach:

Upon reviewing the briefs submitted to your Honor and the extensive oral argument made on the motion to allow the demurrer and to dismiss the complaints and informations, I believe that a few additional citations of cases which we have encountered in our research may be of assistance to the Court in determining the matter now before it.

1. Although no serious question was raised in opposition to Point I of defendants' reply memorandum, i.e., that the constitutionality of the application of criminal statutes may properly be tested by demurrer, we have found an additional case which supports this view, People v. Leiby, 52 N.Y.S. 2d 493 (City Ct. of Utica 1945).

2. At the oral argument counsel for the World's Fair Corporation, which had received leave to participate in oral argument as well as to file a brief amicus curiae, cited to your Honor a case not included in their memorandum, People v. Swald, 72 N.Y.S. 2d 399 (City Ct. Utica 1947). Swald was apparently cited for the purpose of calling to your Honor's attention certain dicta in the opinion which suggested that a taxi driver unauthorizedly on the property of the New York Central Railroad may have been amenable to prosecution

under Section 2036. But the question of what right, if any, a taxi driver may have to solicit, pick up and deliver passengers at a railroad station is one of reconciling diverse pecuniary interests and obviously has nothing to do with the present case of peaceful picketing, or any other situation where rights under the First Amendment are clearly involved under the doctrine of Marsh v. Alabama.

However, People v. Swald does stand for another proposition which is extremely pertinent and which perhaps explains why a full citation was omitted from the World's Fair Corporation's brief. This was an attempt to prosecute the taxi driver for disorderly conduct where defendant's motion to dismiss was granted. The court held:

> "There is an increasing tendency to employ Section 722 whenever it is determined a person should be arrested. This should not be countenanced by the courts." (Id. at 400)

Accord: People v. Goldstein, 268 N.Y.S. 50 (Spec. Sess. App. Pt. 1st Dept. 1933) where conviction of disorderly conduct for peddling newspapers in a subway train was reversed, the court holding that whatever property rights the subway system owner [then private] had "...this right cannot be enforced by an arrest on the charge of disorderly conduct where no other facts but the mere selling of papers has been proven." (Id. at 51)

3. Considerable argument was made before your Honor to the effect that the World's Fair had a sufficient quantum of private property attributes so that First Amendment doctrines applicable to public thoroughfares should not be permitted to penetrate inside the fences of the World's Fair site. In addition to the material cited in Points II and III of our reply brief, we would respectfully invite your Honor's attention to two persuasive decisions, one by the Supreme Court of Washington in Freeman v. Retail Clerk's Union, Local 1207, 363 P.2d 803 (1962) and the other by an intermediate appellate court in California, in Schwartz-Torrence Investment Corp. v. Bakery & Confection Workers Union, 35 Cal. Rep. 179 (1963). Both of these cases involved labor union picketing

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on the sidewalks of privately-owned shopping centers. In each case the court considered the conflicting claims of the private property rights of the shopping center proprietor and the First Amendment rights of the pickets, and concluded that the picketing must be upheld because the thoroughfares on which the picketing was conducted had sufficient public attributes so as to outweigh the private property claim. As the California court held, at page 184:

> "However, attaching the label of private property to the area involved is not in and of itself the answer to the question...Two competing social interests are brought into sharp conflict, the conflict between property rights and freedom of speech."

The court then went on to delineate five factors, previously set forth by the Supreme Court of Washington in the Freeman case, which must be considered when there is such a "sharp conflict" in a picketing contest.

(i) Is the alleged private property devoted to the use of the general public? It should be noted here that although the payment of an admission charge was not a precondition for the use of the parking lot in the shopping center, there was nevertheless pecuniary consideration running from the user of the parking lot in favor of the proprietor of the shopping center, in that the use of the parking lot inevitably redounded in increased sales and consequent gain to the asserter of the private property right. Furthermore, although defendants have not exhaustively surveyed the practices in shopping centers throughout the country, there are undoubtedly some where there is some charge, whether by meter, receipt indicating the making of purchases, or otherwise. Would the constitutional consideration be any less persuasive in such case? To ask the question is to answer it. The peaceful pickets in Freeman and in Schwartz-Torrence would undoubtedly have received the same vindication of their First Amendment rights even if there were an admission charge to the respective parking lots in those cases.

C O P Y

(ii) The second factor cited in these decisions is that the right of free speech extends to all persons naturally on the claimed private property as a result of the inherent nature of the primary use to which the property is devoted. It is important to note here that this "use factor" included its use by pickets asserting their rights of free speech and was not confined to merely use by customers. Similarly, in the instant case, the defendants who paid their admission and entered the Fair, had just as much right to either picket or see the sights, or both, as any other person entering the Fair.

(iii) The third factor is identical to that which was stated so succinctly by the New York City Magistrate in the Pennsylvania Terminal case, People v. Barisi, cited in our reply brief: If the conduct complained of would be permissible on a public thoroughfare outside of the shopping center, it cannot be rendered impermissible in the shopping center, or in Pennsylvania Terminal, or inside the gates of the World's Fair.

(iv) A further factor is whether or not there was a genuine interference with the owner's right of privacy or personal use and occupancy, and whether or not the owner will suffer any direct pecuniary loss. This factor would seem to carefully distinguish between a case such as People v. Lawson, cited in our reply brief, involving a sit-in in a real estate office, and a case of peaceful picketing on a publicly-traversed thoroughfare.

(v) The fifth consideration cited by the Washington Supreme Court and applied by the California appellate court is whether or not the alleged trespasser has any alternate place or means available for the communication of his message. Where the only alternative would be unrealistic and impractical, the First Amendment right is not to be so restricted. The respective shopping centers in the Washington and California cases were undoubtedly so physically situated that there could be no meaningful communication by the pickets to the persons to whom they were directing their message without their being on the sidewalks of the parking lot. Similarly, in the instant case, the message which these four Florida defendants were seeking to communicate was of and concerning the State of Florida, and could not be effectively communicated except in the vicinity of the Florida Pavilion. It cannot be argued that they could have their picket line outside of the gate of the World's Fair, since they were manifestly not protesting racial discrimination on the part of the World's Fair or on the part of any one of the large number of public and private exhibitors within the World's Fair. The only feasible place for the communication to the general public of the fact that for its Negro population the State of Florida does not glitter as its Pavilion glitters, was at the place where persons would be entering or leaving the Florida Pavilion.

Defendants respectfully submit that for the same reasons that the Washington Supreme Court in 1962, and the California appellate court in 1963 held the picketing protected, the New York City Criminal Court in 1964 should hold that this picketing is protected.

Respectfully submitted,

Marvin Moses Karpatkin
Janet Ann Johnson,
Attorneys for defendants

MMK:eb

cc: Hon. Frank O'Connor
District Attorney of Queens County

Harvey B. Ehrlich, Appeals Bureau
Office of District Attorney, Queens County

Whitman, Ransom & Poulson, Esqs.
ATT: P.M. Berkson, Esq.

bc: Melvin L.Wulf, Esq.
Miss Janet Ann Johnson
Carl Rachlin, Esq.

COPY

Carl

JUN 22 1964

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

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File
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June 19, 1964

Harvey B. Ehrlich, Esq.
Appeals Bureau
Office of District Attorney
126-05 Hoover Avenue
Kew Gardens, New York

Re: People v. Collins, et al
Dockets B2772 - B2779

Dear Mr. Ehrlich:

In accordance with today's telephone conversation, I enclose herewith original and three copies of the stipulation which I have prepared for the purpose of expediting a June appeal to the Appellate Term, Second Department in this case. As you can see, I have left blank the date by which briefs and records must be submitted. You have kindly consented to communicate with Mr. Justice Hart for the purpose of ascertaining the last possible date this month when this could be done before the court "dissolves" for the summer. I will expect your telephone call concerning this on Monday.

By the way, I am assured by the stenographer that the transcription of the record, both of the trial and of the sentence, will be completed over the weekend and ready on Monday.

The cooperation which we have received in the matter of expediting this appeal from Mr. O'Connor, your colleagues and you is certainly appreciated.

Very truly yours,

Marvin

Marvin Moses Karpatkin

MMK:eb
Encls.
cc: Miss Janet Ann Johnson
Carl Rachlin, Esq.

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEmpleton 2-9600
CABLE "KARPOLAW NEWYORK"

AUG 7 1964

W.F.

COPY

August 6, 1964

Hon. Walter R. Hart
Justice of the Supreme Court
Supreme Court, Kings County
Brooklyn Civic Center
Brooklyn 1, New York

Re: People of the State of New York
v.
Betty Collins, et al
Docket Nos. B2772 and B2779

Dear Judge Hart:

In your capacity as Presiding Justice of the current Appellant Term of the Second Judicial Department, wherein the above-captioned appeal was submitted without argument, pursuant to stipulation, and is currently sub judice, I enclose herewith three copies of the recent opinion of Hon. Bernard Dubin, Judge of the New York City Criminal Court, in People v. Joachim Prinz, et al.

Inasmuch as Judge Dubin held, in People v. Prinz, et al, that peaceful picketing in front of the Jordanian Pavilion was not disorderly conduct, its relevancy is obvious for the consideration of this appeal from the holding of Judge Balbach of the same Court, that peaceful picketing in front of the Florida Pavilion was disorderly conduct.

While Judge Balbach, in the instant case, held that the World's Fair was private property, Judge Dubin expressly found that "...the World's Fair is quasi-public..."

In response to the arguments made before him that the right to charge admission and the enclosure of the grounds by a fence showed the World's Fair's private status, (arguments identical to those which were made before Judge Balbach in this case) Judge Dubin held that these arguments were "not convincing". He went on to say:

> "There are very few things in life that are free, whether public or private. The parking of a car on many of our public roads, requires the payment of a meter charge. Driving along many of our public roads, such as thruways, require the payment of toll fees. We pay for the very water we drink, by a water tax. Similar examples are readily found contrary to the adage, the best things in life are not free. Similarly, fencing of a public area is not unusual. Visits to many public parks and playgrounds will show a fence surrounding them."

Judge Dubin's opinion further indicates that the facts in this case are much weaker to sustain a conviction of disorderly conduct than in People v. Prinz. Here the pickets were four young women, unknown to the outside world. In Prinz, the pickets were twelve leaders of a national organization, including a number of persons of great public prominence. In the Collins case the crowd, which included a large number of World's Fair police, newspaper and television representatives, was much smaller than that which was attracted by the picketing in Prinz.

Judge Dubin expressly found that the presence of a sufficient number of World's Fair police "negatives the idea that a breach of the peace might have been occasioned." At least thirty police officers were present at the picketing in Prinz, and at least ten at the picketing in this case. Thus, there was police protection available on the scene in the same ratio of 2-1/2 to each picketer.

Finally, in behalf of appellants, it should be noted that with Judge Dubin's decision, every court which has considered whether the World's Fair is "private property" or something other than private property, has held the Fair to be at least quasi-public, except for Judge Balbach in the instant decision under appeal. These include United States District Judge Harold R. Tyler, Jr., in Farmer v. Moses (a copy of which was supplied at your law secretary's request) and the Appellate

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Hon. Walter R. Hart
Justice of the Supreme Court

August 6, 1964

Division of this Department in Froslid v. Hults, 248 N.Y.S.2d 676 (2d Dept. 1964).

It is respectfully prayed that this letter, submitted in triplicate, be deemed an application for leave to file a supplemental brief, and, if granted, that it be received as such supplemental brief.

Respectfully submitted,

Marvin Moses Karpatkin per EB

Marvin Moses Karpatkin
Attorney for Defendants

MMK:eb

cc: Hon. Frank D. O'Connor
District Attorney of Queens County
126-05 Hoover Avenue
Kew Gardens, New York
ATT: Harvey B. Ehrlich, Esq.

Whitman, Ransom & Coulson, Esqs.
522 Fifth Avenue
New York, N.Y.
ATT: Pincus M. Berkson, Esq.

bc: Miss Janet Ann Johnson
Miss Nanette Dembitz
Carl Rachlin, Esq.
George Schiffer, Esq.

COPY

Law Offices

SQUADRON, ALTER & WEINRIB

STEPHEN WEINRIB
DAVID ALTER
HOWARD M. SQUADRON

LAWRENCE H. ROGOVIN
DIRK S. GOULD

EDWARD C. WEINRIB
COUNSEL

32 East 57th Street, New York 10022

PLAZA 2-6550

NOV 4 - REC'D

November 3, 1964

George Schiffer, Esq.
40 East 49th Street
New York, New York

Re: People v. Penn, et al.

Dear George:

In accordance with our telephone conversation, we enclose a copy of my letter dated October 28, 1964 to Carl and photostatic copy of the opinion of the Appellate Term in the above matter for mimeograph reproduction by your office. Please return the photostatic copy to me as it is the only copy of the opinion available; and I should appreciate it if you could send me three or four mimeographed copies of the opinion as well.

Also, pursuant to our discussion, we are preparing and will shortly serve Notice of Appeal from the Appellate Term decision.

Sincerely,

Howard M. Squadron

HMS:kr
Enc.

cc: Carl Rachlin
Alan Rosenberg

MSS SEDFRE

NEW YORK vs. CRAYTON, FRANCES, et. al., 1966

State Historical Society of Wisconsin

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CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, PART IIB
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PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

FRANCES CRAYTON, ELAINE BIBULD, JOYCE SCHURIK, PAUL HEINEGG, ISAIAH BRUNSON, KENNETH RICE, HOWARD QUANDER and HERBERT CALLENDER,

Defendants.

---X

DOCKET NOS.
C6712 - 6721 and
B3022 - 3029

MEMORANDUM OF LAW

THE FACTS:

On March 27, 1964, defendants, Negro and white, notified the press and then, conceedly without any prior appointment, and at about 1:30 P.M., proceeded to City Hall to discuss discrimination against Negroes in housing, employment, police treatment and public education with Mayor Wagner. They entered City Hall and noting that the gate to the West wing was open and unguarded, proceeded through same. Proceeding West, they were ordered to stop by Police officers who advised them in the absence of posted regulations, that they could not remain in the West wing of City Hall. Instead of leaving they sat down. They did not obstruc the stairway or the doorways in the West wing. Police officers asked them to leave and when they failed to leave they were arrested and carried to a police van. They remained silent all the while. Mayor Wagner was not at City Hall. They are charged with having violated 722(2), 1851, 2092 and 2036 of the Penal Law.

FORM 7118 OS GOLDSMITH BROS. N. Y. S. CO 7-7900

In addition, defendants QUANDER and CALLENDER are charged with having violated Section 244 of the Penal Law.

THE LAW

POINT I - THERE ARE NOT SUFFICIENT FACTS TO SUPPORT A VIOLATION OF SECTION 2092 OF THE PENAL LAW.

Unlawful Assembly is defined as follows:

"Whenever three or more persons

1. Assemble with intent to commit any unlawful act by force; or
2. Assemble with intent to carry out any purpose in such manner as to disturb the public peace; or,
3. Being assembled attempt or threaten any act tending towards a breach of the peace, or an injury to person or property or any unlawful act:

Such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, is guilty of a misdemeanor. But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition."

FORM 7118 OS GOLDSMITH BROS. N. Y. & CO 7-7900

GOLDSMITH BROS., Stationers & Printers, 77 Nassau St., N. Y. 8, CO 7-7900
No. 7118-B RAG CONTENT PAPER

The intent of the statute is clearly to prevent the crime of riot as defined in Section 2090 of the Penal Law and punished in Section 2091 of the Penal Law. The crime of riot necessarily involves the use of "force or violence". When Section 2092 speaks of "breach of the peace" or "disturbance", it necessarily has reference to such "force or violence". See People v. Most, 128 N.Y. 108 (1891); People v. Wilson, 282, A.D. 723, 122 NYS 2d 202; and the proposed New York Penal Law (1964) Section 245.05.

In the recent case of Peo. v. Martinez, 43 Misc. 2d 94, 250 NYS 2d 28 (1964) the facts were as follows:

> Seven persons entered police headquarters and asked to see the police commissioner without prior appointment. When informed that they could not see the commissioner they went to the vicinity of his office and sat on the floor. Each was ordered to rise and two refused. All were charged with violating Sections 2092 and 2036 of the Penal Law.

With reference to Section 2092 of the Penal Law, the majority, JUDGES GASSMAN and O'BRIEN found:

> "The facts herein do not prove the guilt of any of the defendants beyond a reasonable doubt of the charge of Unlawful Assembly" Peo v. Martinez, supra., p. 30.

There has been no showing in the instant case beyond a reasonable doubt of an assembly to commit or threaten acts of "force or violence" within the meaning of the statute.

POINT II - THERE ARE NOT SUFFICIENT FACTS TO SUPPORT A VIOLATION OF SECTION 2036 OF THE PENAL LAW.

Section 2036 reads:

> "A person, who intrudes upon any lot or piece of land within the bounds of a city or village without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority....is guilty of a misdemeanor".

The purpose of the statute was to distinguish criminal from civil trespass. The distinguishing feature was found to be the "criminal mind", see People v. Stevens, 109 NY 159, 16 N.E. 53 (1888), People v. Winig, 163 NYS 2d 995 (1957). Criminal intent may not be inferred, but must be shown beyond a reasonable doubt. The defendants here believed they had a right to enter City Hall (as do all members of the public) and to walk through an unguarded open gate. There was clearly an implied invitation to defendants to proceed as they did up to the point of being told that they were in an unauthorized area.

GOLDSMITH BROS., Stationers & Printers, 77 Nassau St., N. Y. 8, CO 7-7900
No. 7118-B RAG CONTENT PAPER

GOLDSMITH BROS., Stationers & Printers, 77 Nassau St., N. Y. 8, CO 7-7900
No. 7118-B RAG CONTENT PAPER

a) THE REFUSAL TO LEAVE PROPERTY WHEN REQUESTED CANNOT AMOUNT TO A CRIMINAL TRESPASS ONCE A PARTY HAS LAWFULLY ENTERED THEREON.

It is now, well settled law, that "Section 2036 in clear and unambiguous language makes criminal only an unauthorized entry upon real property. It does not purport to make criminal a refusal to leave property which had been lawfully entered". People v. Lawson, 44 Misc 2d 578, 580, 254 S 2d 300 affirmed 16 N.Y. 2d 552, 260 N.Y.S. 2d 661, advance sheets (1965), reversing 38 Misc. 2d 611, 238 NYS 2d 839. See Also, People v. Rollins, 44 Misc. 2d 430, 254 NYS 2d 182, affirmed 16 N.Y. 2d 554, 260 N.Y.S. 2d 662 advance sheets, (1965), reversing an unreported Criminal Court conviction. These decisions permit no speculation by the trial court as to whether defendants entered for a lawful or unlawful purpose. In Lawson supra., the Court held:

> "Nieman admitted that 'anybody can come in' to his office. There was clearly an implied invitation.... to enter". p. 579.

The trial court in Lawson had found that:

> "Their actions showed that they had a criminal intent when they entered the office in the first place." Peo v. Lawson, Supra pp 842 and 843,

but the appellate Court brushed this aside as meaningless. The entry itself was lawful and a possible criminal intent could not render same unlawful for purposes of either civil or criminal trespass. In the instant case, the public nature of City Hall, the absence of posted regulations, the open gate and absence of guards render the entry lawful and at lease impliedly authorized. It was not defendants fault that they were already within the West wing when they learned for the first time that they were not permitted there. Lawson and Collins, Supra. are both clear to the point that defendants were not obliged to leave having lawfully entered.

POINT III - THERE ARE NOT SUFFICIENT FACTS TO SHOW A VIOLATION OF SECTION 722 OF THE PENAL LAW.

Section 722 declares:

> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> 1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct, or behavior;
>
> 2. Acts in such manner as to annoy, disturb, interfere with, obstruct, or to be offensive to others;
>
> 3. Congregates with others on a public street and refuses to move on when ordered by the police;
>
> 4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd...."

FORM 7118 OS GOLDSMITH BROS. N. Y. 8, CO 7-7900

Sections 1, 3 and 4 are included because a judgment of conviction can be affirmed if the evidence establishes a violation of any of the subdivisions, even though initially defendant was charged with violation of a different subdivision. See People v. Feiner, 300 N.Y. 391, 398. Thus it is important to take cognizance of all possible violations of Section 722.

The charge under subdivision (1) one must fall since there is no evidence that the defendants, when refusing to leave, used abusive, offensive, threatening, or insulting acts or language. Even if defendants did use vile language to the policemen, that by itself would not constitute a breach of the peace nor the likelihood that a breach of the peace might be occasioned. "It is to be expected that the officers (police officers) will not themselves breach the peace." Since there was no actual breach of the peace and since the presence of the police made such a breach of the peace extremely remote if not impossible, an essential element of the charge of disorderly conduct is missing. Accordingly, the motion of the defendant to dismiss....is granted." People v. De Stefanis 34 NYS 2d 52, 54 (1942) See Also People v. Oczko 272 N.Y. 604 (1936) and People v. Mc Cauliff 267 N.Y. 581 (1935).

"Subdivision 2 of Section 722 is upon its face very broad and should be limited in its application....The term 'breach of the peace' signifies the offense of 'disturbing the public peace or tranquility enjoyed by the citizens of a

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community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to breach the peace; a disturbance of public order by an act of violence, or by an act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community.'" *People v. De Stefanis*, 34 NYS 2d 42, 53 (1942). See also *People v. Montgomery*, 17 NYS 2d 71 (1940) and *People v. Rabey*, 48 NYS 2d 937 (1944).

"The disorderly conduct statute is concerned exclusively with the preservation of the public peace." *People v. Tinston*, 163 NYS 2d 654 (1957). "It seems to this court that when we consider that the prime purpose of this section is to preserve public order and peace, then it would appear that the offensive conduct to 'others' must be public in nature and must cause alarm or disturbance to a substantial part of the public." *People v. Szepansky*, 203 NYS 2d 306 (1960). "What is meant by 'public in nature' as that term is used in the cases, is that the conduct must be open or exposed to the public so as to immediately affect some segment of the public or community. Conduct which is out of sight and earshot of other members of the public and committed in privacy or seclusion, is not 'public in nature'." *People v. Fox*, 219 NYS 2d 218 (1961). The actions complained of in the case at bar took place in the west wing of an enclosed building hidden from the view of the general public. The only people who could possibly have been disturbed were the police and personnel of of City Hall. Defendants therefore assert that their actions were not "public in nature" as required under the statute.

In a similar case the defendant, on private property, attempted to engage those who answered the door in conversation and offered to leave printed matter with them. The parties approached immediately made clear to the defendant that they were not interested and requested her to leave. Instead of departing she lingered. Much to their justified discomfort and annoyance she persisted in her efforts to convince them. It appears, however, that the defendant spoke only in an ordinary tone of voice, and while her visit was most untimely and unwelcome, there was no noise, alarm, consternation or disorder. Reversing a conviction under 722 (2), the court declared that "The public was not disturbed, nor could it have been under any reasonable interpretation of the proven facts. Consequently there was no breach of the peace." People v. Ludovici, 13 NYS 2d 88, 89 (1939).

It is clear from decisions such as People v. Hipple, 263 N.Y. 242 (1934) that under subsection (2), it is not decisive whether the action takes place on public or private property but rather whether or not the public tranquility is disturbed. It is apparent from the facts of this case that the public peace was not disturbed by the defendants' actions.

The prosecution also maintains that the defendants, refusing to leave, blocked free passage in the west wing of City Hall. This is insufficient to support a conviction under 722 (2).

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"There is absolutely no showing here that defendants caused any serious annoyance to pedestrians or that their manner was threatening or abusive. Indeed the only evidence upon which the conviction might be predicated was the arresting officer's simple statement that the defendants 'were blocking the pedestrians right of way'. That evidence we hold to be insufficient." People v. Carcel and Collazo, 3 N.Y. 2d 327 (1957). "Men and women constantly congregate or walk upon the streets in groups, quite oblivious of the fact that in some degree they are thereby causing inconvenience to others using the street.....Surely such conduct does not always tend to a breach of the peace.... In the absence of evidence that the defendants caused substantial annoyance to others....we find the evidence insufficient to sustain the conviction of the defendants in this case." People v. Nixon, 248 N.Y. 192, 188 (1928). The liberal trend of Carcel and Collazo, Supra, was recently adhered to in the case of People v. Davis, 15 N.Y. 2d 683, (1965), ~~xm~~ which reversed a conviction upon 722 (2) in Criminal Court New York County which had been affirmed by Appellate Term of the Supreme Court, First Judicial Department. In that case, defendant, while with three others, broke a beer bottle on the street, ~~loudly cursed a police officer~~ and "swung his hand away as if to swing" when the police officer attempting to make him clean up the mess, put his hand on defendant's shoulder. When the officer slapped defendant, defendant wrestled him to the ground. People were looding out of their windows. Here as in Davis, Supra, the police

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were seeking affirmative action by defendants to eliminate an annoying and unsightly condition. Davis, lawfully refused to pick up the bottle with which he had littered the streets. Defendants here, lawfully failed to immediately obey the police officers commands to leave the west wing of City Hall. Section 722 did not require their immediate obedience to that command. There was no violation of Subdivision (3) three of Section 722 since at no time did any action take place on a public street. "By the language of the subdivision of the section the congregating must be 'on a public street' and the evidence negatives the claim that the defendant was 'on a public street.' He has not committed the offense specified in subdivision 3 of Section 722." People v. Hipple, 263 N.Y. 242, 243-4 (1942). "The term 'congregates with others', as used in the statute, requires at the very least three persons assembling at a given time and place....It would be an unjustifiably liberal interpretation of subdivision 3 and at variance with the strict construction called for in these cases to hold that the defendants here, only two in number.... were 'congregating with others.'" People v. Carcel and Collazo, 3 N.Y. 2d 327 (1957) (Emphasis added). This strict construction requires that the actions take place on a public street or else not be within subdivision 3.

In People v. Fox, 219 N.Y.S. 2d 218 (1961), the defendant and others were milling about a driveway blocking the gate leading to the plant. The police formed a wedge and moved toward the gate.

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The defendant refused to move back when ordered by the police, pressed against the wedge, used insulting, offensive, and provocative language, broke through the wedge and disrupted the police line before finally being arrested. The court, denying a motion to dismiss charges of violation of 722 (1) and (2), declared that since the action didn't take place on the public street, there was no violation of 722 (3). Supra. p. 219. Thus under a strict interpretation of the statute, there was no violation of subdivision (3).

"What will constitute an assemblage or a crowd within the meaning of Section 722, Subidivision 4, depends entirely upon the circumstances. To sustain a conviction under that subdivision, there must be some evidence that the defendants did collect a crowd. A crowd is a throng, a great number of persons, a multitude" People v. Kieran 26 NYS 2d 291 (1940). Since the only people that were atrracted to the scene were reporters, the defendants did not violate Section 722. Reporters and police cannot be included in the definition of crowd for otherwise every arriving or departing personage is violating Subdivision 4. The bystanders voluntarily looked on to gratify curiosity or a desire for amusement (See Poeple v. Perry, 265 N.Y. 362, 365 (1934) and thus weren't "annoyed" under subsection (2). Likewise they were not large enough in numbers to violate section 4 and did not tend toward a breach of the peace. For the purpose of subdivision 4 is to prevent the formation of large crowds which will tend to breach the peace. A gathering of reporters certainly is not of this character.

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i) DEFENDANTS, ALL MEMBERS OF THE CONGRESS OF RACIAL EQUALITY, DID NOT INTEND TO BREACH THE PEACE AND ARE SKILLED IN AVOIDING CONDUCT WHEREBY A BREACH OF THE PEACE MIGHT BE OCCASIONED.

The introductory clause of Section 722 of the Penal Law requires acts committed

a) "with intent to provoke a breach of the peace" or,

b) "whereby a breach of the peace may be occasioned".

These defendants ask the Court to judicially notice that members of the Congress of Racial Equality are trained in the teacniques of non-violent protest. The defendants did not intend a breach of the peace and received training in avoiding violence where others, provoked by their beliefs, or their actions, seek to involve them in violence. This goes beyond a mere lack of criminal intent. There is a positive intent to never strike back, thereby helping to maintain the peace. The defendants in notifying the press that they as CORE members were going to City Hall, in effect served notice upon the City of New York that a non-violent protest would be made at City Hall. Police, City Hall employees, persons having business at City Hall, the press, all may be presumed to know the non-violent techniques of protest of the defendants at the very time they observe them seated upon the floor. It is somewhat unreasonable to presume that these acts by these known CORE members tend to profoke a breach of the peace. These acts tend to provoke displeasure, arrest, publicity, but not a breach of the peace. There is a reasonable doubt that persons known by the public to be non-violent to the extent of not striking back when spat upon, kicked, punched and otherwise abused could tend to cause a breach of the peace by lying or sitting in the West wing of City Hall. As a matter of fact, it is to the credit of the people of the City of New York that the public while often annoyed by CORE demonstrations, has never engaged in the kinds of violent abuse of non-violent demonstrators that they have experienced in the South. It is not unreasonable to assume that New Yorkers, generally sympathetic to the cause of Negro equality, would tolerate such a non-violent protest. In the past, when the authorities have permitted CORE demonstrators to sit-in or lie-in in public places, the people of New York have been understanding of their purpose and motivation and have not engaged in violent conduct against them. While the police may have properly and honestly believed that defendants'actions tended to a breach of the peace, this Court may, with greater hindsight ;and more time at its disposal, conclude that there is a reasonable doubt as to whether defendants'acts tended to breach the peace and that the presumption of defendants' innocence has not been overcome beyond a reasonable doubt.

ii) DEFENDANTS HAD A CONSTITUTIONALLY PROTECTED RIGHT TO REMAIN AT CITY HALL TO PETITION FOR A REDRESS OF GRIEVANCES.

In the case of Edwards v. South Carolina 83 Supt. Ct. 680 (1963), reversing the State Court convictions, 187 Negroes

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demonstrated on the State House Grounds, in a peaceful and quiet manner. After being ordered to leave, in violation of their Constitutional Right to remain, they sang songs, stamped feet and clapped hands. They did not interfere with pedestrian or vehicular traffic. Police protection was ample at all times. They threatened no one with violent language. The 200-300 bystanders were neither violent nor threatening violence. Significantly, the Court found that if they had disobeyed a law reasonable limiting the periods during which the State House Grounds were open to the public, it would be a different case.

That Edwards Case was followe by two Per Curiam decisions wherein Edwards was cited as the reason for reversing criminal convictions.

The first of these was Fields v. South Carolina, 375 U.S. 44 (1963) in which 1000 Negroes demonstrated in the downtown business section of Orangeburg, South Carolina and 349 were arrested. There was no violence threatendd by the crowd. Police protection was ample at all times. The demonstrators threatended no one. However, they did block traffic, and cluttered the sidewalks to the extent that pedestrians were forced to go into building entrances to get off the street. The defendants refused to disperse when requested by police.

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The other decision was City of Rockhill v. Henry, 375 U.S. 6 (1963) reversing the convictions of 65 Negroes who demonstrated in front of City Hall in Rockhill, South Carolina. The defendants sang patriotic songs in a loud and boisterous manner, caused such a crowd to collect that it overflowed into the street, sang for 25 minutes, sang so loudly that work in City Hall was completely disrupted and refused police requests to disperse. There was no violence or threatened violence and police protection was ample at all times. In all three cases, South Carolina infringed the defendants' constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances.

The Court's finding that the situation would be different if a law requiring the closing of the State House Grounds at a specified hour, in Edwards, is significant, because New York State Courts have held:

> "The opinion of a policeman as to a possible breach of the peace under existing conditions may be entitled to consideration as a fact, one fact, in evidence. It cannot, however, be taken as conclusive. To do so would be tantamount to surrendering the function of the Courts and the Legislature to the police." People v. Trumbol et al, 63 NYS 2d, 720, 722 (1946).

iii) THE ARRESTS ABRIDGE DEFENDANTS' PRIVILEGES AND IMMUNITIES GUARANGEED BY THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

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Defendants, in an emergency, effecting the community they sought to represent, went to the seat of Municipal Government for a conference with the Myor. They had no prior appointment. The freedom to peacefully assemble and petition their government for a redress of grievances is a privilege and immunity of a citizen of the United States secured against state infringement Hague v. CIO, 307 U.S. 496; Thomas v. Collins 323 U.S. 516; AFL v. Swing, 312 v.s. 321; Cafeteria Employees Union v. Angelos, 320 U.S. 293.

POINT IV - THE MERE FACT OF LAYING DOWN OR SITTING DOWN IN THE WEST WING OF CITY HALL DOES NOT PROVE THE CRIMES AND OFFENSES WITH WHICH DEFENDANTS ARE CHARGED.

Having lawfully entered an unguarded and open gate and then being advised that they cannot be where they already are, the defendants are placed upon the horns of a dilemma. It cannot be said, beyond a reasonable doubt, that their solution was criminal and that the sole non-criminal solution was to turn around and leave. Peo v. Lawson and Peo v. Collins Supra., tell the defendants that they may not be charged with Unlawful Intrusion for their refusal to leave. Section 722 (3) of the Penal Law does not require them to "move on" since they are not on a "street". Not wishing to leave, they sit. It is far too early in the day to invoke the rule of Peo v. Gootzeit, 302 N.Y. 888 (1954) against them as to closing hours at City Hall and their arrest has proceeded too rapidly to say with any degree of certainty that they actually interferred with, annoyed or obstructed City Hall personnel required to use the west wing to a degree that goes beyond that permitted in *Peo vs. Carcel* and *Peo v. Collazo*, and *Peo v. Davis*, Supra. While their manners of the moment were undoubtedly bad, the Court is not permitted to *assume* that they would not have left City Hall before actually interferring with, annoying or obstructing City Hall personnel or others to a degree which would have threatened a breach of the *peace*. As in the case of *People v. Hendrix*, Docket Nos. B6064 to B6068 and C14612 to C14616, decided by JUDGE SIMON SILVER on December 5, 1964, Part 2A Criminal Court, New York County, memorandum decision, unreported, the premature feeling that someone might be annoyed, interferred with or obstructed if defendants were permitted to continue to sit does not meet the requirement of the statute. The obstructio and annoyance of the public (not the police) must be actual, not threatened. Only the breach of the peace may be threatened. Here, the arrests took place prior to the occurence of any civilian annoyance or complaints. The defendants, unmannerly as they were, were entitled to some period of time to think over their predicament In dealing with a situation where the Court believed that defendants had the right to proceed all the way to their point of destination, County Court, Suffolk County in a decision dated April 21, 1965, reversing judgment of conviction of 722(2) of the Penal Law at Special Sessions, Riverhead, J. P. Thomas P. Castello while discussing the defendant's conduct in lying down in the roadway stated:

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> "It was the County's unlawful order which created the hazard and the request by the Under-Sheriff that the defendant remove himself from the road when he was not allowed to proceed offered him a Hobson's choice if not placing him between Scylla and Charybdis." Peo. v. Lynch, memorandum decision, apparently unreported, County Judge GEORGE F. X. McINERNEY. Application for leave to appeal to the Court of Appeals denied May 21, 1965 by JUDGE FULD, County Court, Riverhead.

In the instant case, in the absence of posted regulations, the police had both the right and duty to prevent the public from entering unauthorized portions of City Hall. Having failed in that duty, through no fault of the defendants, People v. Collins and People v. Lawson, Supra., tell us that the mere fefusal to leave does not violate 2036 of the Penal Law nor does it violate 722 (3) of the Penal Law since not occuring upon a "street". Peo. v. Lynch, Supra., indicates that sitting down or lying down momentarily does not give rise to a violation of 722 (2). While the police did not precisely cause the situation here, as they did in Peo. v. Lynch, Supra., they certainly contributed to it to a very large degree. In the absence of posted regulations, it was a police duty to see that the gate to the west wing of City Hall was closed, and to post an officer at said gate to prevent unauthorized persons from entering. The absence of the Mayor on the day in question was no excuse for this police laxity. The defendants should not be penalized for police failure.

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POINT V - RESISTING ARREST AND SIMPLE ASSAULT HAVE NOT BEEN ESTABLISHED.

If the other charges fall, violation of Section 1851 of the Penal Law falls automatically. Beyond this, however, interference with a public officer requires some affirmative act of resistance by a third party. There is no authority for the proposition that an accused must cooperate in his own arrest. The 1964 proposed New York Penal Law referring to draft No. 8 of the Model Penal Code reported to the American Law Institute in 1958 Sections 208.30, 208.31, 200.05, 210.40 and 210.45 show t the present law as stated in Sections 1825 and 1851 of the Penal Law fails to deal with the problem of non-cooperation with ones own arrest. Accordingly Section 1851 of the Penal Law is so vague as to afford no ascertainable standard of guilt and is within the void for vagueness doctrine of Screws v. United States, 325 U.S. 91 (1945). The trial Courts are hopelessly split upon this issue. Obviously the legislature in enacting 1825 and 1851 of the Penal Law did not contemplate the limp non-violent civil rights demonstrator. There is authority that following arrest, the arrestee is under no duty to remain in custody. See People v Murphy, 130 Cal. App. 408, 20 P. 2d 63. The very concept of arrest is one of forcible seizure and if additional force is required owing to the inert state of the defendant, in the absence of clarifying legislation, such force would be an added burden to the police, not an additional crime to be charged to the defendant. Defendants Quander and Callender deny that they struck,

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hit, brushed, contacted or otherwise injured any person at City Hall. Both are strongly opposed to violence of any kind.

CONCLUSION

THE INFORMATIONS SHOULD BE DISMISSED AND THE DEFENDANTS ACQUITTE.

Respectfully submitted,

JOHN E. SILVERBERG
Attorney for the Defendants
15 Park Row
New York, New York 10038

FORM 7118 OS GOLDSMITH BROS. N. Y. 8, CO 7-7900

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, PART IIB

---X

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

FRANCES CRAYTON, ELAINE BIBULD, JOYCE SCHURIK, PAUL HEINEGG, KENNETH RICE, HOWARD QUANDER and HERBERT CALLENDER,

Defendants.

DOCKET NOS.
C6712 - 6721 and
B3022 -3029 1964

---X

SIRS:

PLEASE TAKE NOTICE that the defendants, FRANCES CRAYTON, ELAINE BIBULD, JOYCE SCHURIK, PAUL HEINEGG, KENNETH RICE, HOWARD QUANDER and HERBERT CALLENDER, hereby appeal to the Supreme Court of the State of New York, Appellate Term, First Judicial Department, from a judgment of conviction of the Criminal Court of the City of New York, New York County, Part IIB rendered on the 31st day of December, 1965, by the Honorable Judge Bernard J. O'Connell, convicting the said defendants of having violated Section 722(2) and 1851 of the Penal Law and from each and every part thereof as to each defendant.

Dated: January 24, 1966

Yours, etc.,
JOHN E. SILVERBERG
Attorney for Defendants
Office & P. O. Address
15 Park Row
New York, New York 10038

55

TO: FRANK S. HOGAN, ESQ.
District Attorney of
New York County
and
ISADORE SPAKER, ESQ.
Appeals Clerk of the
Criminal Court of the
City of New York
New York County

April 20, 1966

Mr. Ira Dickstein
2940 Ocean Parkway
Brooklyn, New York 11235

Dear Mr. Dickstein:

Enclosed is our check for $325 as partial payment on your estimate of cost for transcript in People vs. Crayton, et al. I believe that John Silverberg has already spoken to you about this case.

Sincerely,

Marvin Rich
Executive Director

MR:hm
Enclosure

cc: Stephen Nagler ✓
John Silverberg

MSS
546

SEDFRE

STATE OF NEW YORK vs. DEWS, JACK et al., (PORT AUTHORITY CASES), 1964-1967
(1964 WORLD'S FAIR DEMONSTRATIONS)

Box 40
Folder 11

State Historical Society of Wisconsin

Please Retain Original Order

get his name
also Taking etc

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Docket No.

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

ROBERT AUERBACH, ARNOLD GHINGER, ALLEN KIMBRELL, RICHARD XXXXX, BROOKS, LESLIE BOYER, RICHARD MURPHY, RONALD RILEY, JEAN FOREST, JACK DEWS, WALTER BROOKS, JENNIFER MILLER, PHILLIPA POZE, MARJORIE PHYFE JOYCE SHURIK, ALLEN CHERRY, FRANKLIN ALEXANDER, MORTON ALEXANDER, and ALFRED JAMES,
Defendants.

JUDICIAL SUBPOENA

DUCES TECUM

TO: JOHN WITTENBORG, the first name being unknown, but described more accurately as a photographer for the Port of New York Authority.

8th Avenue, New York, New York GREETING:

WE COMMAND YOU, that akl business and a excuses being laid aside, you and each of you appear and attend before the Honorable Judge presiding in this Y Court at PART III thereof at 100 Centre Street, 13th floor, on the 18th day of February, 1965, at 9:30 o'clock in the forenoon, and at any recessed or adjourned date to give testimony as a witness upon the part of the Defendants, in a certain criminal action now pending in this Court, then and there to be tried , and that you bring with you, and produce at the time and place aforesaid, all photographs, film footage and records taken by you on the 7th day of November, 1965, relating to the picket line and demonstration xak in fron t of the Trailways ticket counter on the main floor of the Port Authority Building, ________8th Avenue, New York City, now in your custody, and all other xxxxxxx records, photographs, and films which you have in your custody or power, concerning the abovementioned incident.

Failure to comply with this subpoena is punishable as a contempt of court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable ________________, one of the Judges of the xxx said Court, at 100 Centre Street, the ____day of February, 1965.
Jules D. Zalon, etc.

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on the 15th day
of April, 1965.

PEOPLE v. AUERBACH

STATEMENT PURSUANT TO RULE 5531 of CPLR

1. The Docket Numbers in the Court below are Y4895, C22180, Y4891, C22181, C22185, C22176, C22184, C22187, C22186, C22182, Y4894, C22179, C22178, C22177/1964.

2. The names of the parties are THE PEOPLE OF THE STATE OF NEW YORK vs. ROBERT AUERBACH, ARNOLD GHINGER, ALLEN KIMBRELL, RICHARD BROOKS, LESLIE BOYER, RICHARD MURPHY, PHILLIPA POZE, MARJORIE PHYFE, JOYCE SHURIK, ALLEN CHERRY, FRANKLIN ALEXANDER, and ALFRED JAMES.

3. The defendants were arrested on the 7th day of November, 1964 in the County of New York.

4. The action was commenced in Part III of the Criminal Court of the City of New York on the 15th day of April, 1965.

5. The defendants are charged with a violation of Section 722, subdivisions 2 and 4 of the Penal Law.

6. This appeal is taken from the Judgment of Conviction on the 5th day of May, 1965 by the Hon. Irving I. Schreckinger.

7. The appendix method is not being used.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

---X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT AUERBACH, ARNOLD GHINGER, ALLEN KIMBRELL,
RICHARD BROOKS, LESLIE BOYER, RICHARD MURPHY,
PHILLIPA POZE, MARJORIE PHYFE, JOYCE SHURIK,
ALLEN CHERRY, FRANKLIN ALEXANDER, and ALFRED
JAMES,
Defendants-Appellants.

---X

STATEMENT PURSUANT TO RULE 11 (2)(c) OF THE RULES OF THE APPELLATE TERM FOR THE FIRST JUDICIAL DEPARTMENT

The defendants were given a suspended sentence, no fine was required, nor are the defendants presently out on bail. The docket numbers are: Y4895, C22180, Y4891, C22181, C22185, C22176, C22184, C22187, C22186, C22182, Y4894, C22179, C22178, C22177/1964.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 3

---X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,
-against-

ROBERT AUERBACH, ARNOLD GHINGER, ALLEN
KIMBRELL, RICHARD BROOKS, LESLIE BOYER,
RICHARD MURPHY, PHILLIPA POZE, MARJORIE
PHYFE, JOYCE SHURIK, ALLEN CHERRY, FRANKLIN
ALEXANDER, and ALFRED JAMES,
Defendants-Appellants

---X

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE, that the defendants herein hereby apply from the judgment of conviction rendered against them in this Court for violation of Section 722 of the Penal Law on the 5th day of May, 1965, and from each and every intermediate order therein made and more particularly from the sentence herein imposed on the same day by Hon. Irving I Schreckinger, Judge, said sentence being suspended.

Dated: New York, New York
June 2, 1966

Yours, etc.,
STEPHEN M. NAGLER, Esq.
Attorney for Defendants
Office & P.O. Address
c/o George Schiffer
40 East 49th Street
New York, New York

CERTIFIED COPY OF COMPLAINTS with ENDORSEMENTS

AFFIDAVIT OF NO OPINION

Pursuant to C.P.L.R. 3106, and acting under the penalties of perjury, the undersigned attorney for the defendants-appellants hereby affirms that there has been no opinion rendered by the Judge who presided at the trial of his action, except the opinion heretofore set forth herein.

Dated: New York, New York
October 25, 1966

STEPHEN M. NAGLER

ORDER DISPENSING WITH MINUTES

ATTORNEY'S CERTIFICATION
(Pursuant to CPLR 2105)

The undersigned attorney for the defendants-appellants herein, hereby certifies that the foregoing record on appeal contains a copy of the Notice of Appeal, the information with all the endorsements thereon, an order dispensing with the minutes of the trial and sentence, and judgment roll in action of the PEOPLE OF THE STATE OF NEW YORK against ROBERT AUERBACH, convicted of a violation of Section 722, Subdivisions 2 and 4 of the Penal Law, and said record has been compared by me with the original and it is a true copy of the transcript of the whole of such originals.

Dated: New York, New York
October , 1966

STEPHEN M. NAGLER

ORDER SETTLING CASE

The foregoing case on appeal, containing all the evidence is hereby settled and ordered on file.

Dated:

Judge, Criminal Court

CLERK'S RETURN ON APPEAL

I, the undersigned, Clerk of the Criminal Court of the City of New York, respectfully make return to the Appellate Term of the Supreme Court for the First Judicial Department and certify upon the affidavit of the appellants' attorney that there are attached hereto correct copies of the Notice of Appeal and papers required to be returned pursuant to the Code of Criminal Procedure and rules and regulations of the Appellate Term of the Supreme Court for the First Judicial Department.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the above court this day of October, 1966 .

CLERK

DEFENDANTS' CRIMINAL RECORD

STATE OF NEW YORK) SS,:
COUNTY OF NEW YORK)

JACK DEWS, being duly sworn, deposes and says:

1. I was convicted with 17 others, of violating Section 722 of the Penal Law in the Criminal Court of the City of New York, New York County, on May 5th, 1965 and received a suspended sentence.

2. Timely Notice of Appeal was served and filed on June 2nd, 1965.

3. I am 17 years of age and reside with my parents at 60 Horton Avenue, New Rochelle, New York.

4. I am a full-time student at New Rochelle High School, entering the 12th grade in September, 1965. During the school year I am not employed and have no personal income. During the summer I have been doing odd jobs, and I am presently employed as a messenger at the City Hall of New Rochelle. I am earning $1.25 per hour.

5. The only other income which my family receives is the $100 per week which my father, Jack Dews, Sr., receives as a construction worker with the MacNamee Construction Company, in New Rochelle. This income supports a family of 5 (my mother and father and 2 children other than myself).

6. The personal property owned by my family consists of an old television set and incidental furniture and clothing, of the value of approximately $200.00. My personal property consists of used clothing and books of the value of approximately $50.00.

7. Neither I nor any member of my family owns any real property.

8. Neither I nor any member of my family owns a car.

Nancy

File either Breach of the Peace or Disorderly Conduct

Schiffer

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Plaintiff, :

-against- :

JACK DEWS, ALLEN KIMBRELL, JENNIFER MILLER, RONALD RILEY, ALLEN CHERRY, ROBERT AUERBACH, RICHARD MURPHY, ALFRED JAMES, MORTON ALEXANDER, FRANKLIN ALEXANDER, ARNOLD GHINGER, RICHARD BROOKS, WALTER BROOKS, JEAN FOREST, PHILIPPA POSE, WESLIE BOYER, JOYCE SURIK, and MARJORIE PHYFE, :

Docket Nos.

Defendants. :

- x

PRE-TRIAL BRIEF FOR DEFENDANTS

Dated: April 15, 1965

Attorneys for Defendants:

MARVIN M. KARPATKIN
BRADLEY R. BREWER
CARL RACHLIN
GEORGE SCHIFFER
JULES ZALON

Of Counsel:

MARVIN M. KARPATKIN
and
BRADLEY R. BREWER

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CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Plaintiff, :

-against-

JACK DEWS, ALLEN KIMBRELL, JENNIFER MILLER, RONALD RILEY, ALLEN CHERRY, ROBERT AUERBACH, RICHARD MURPHY, ALFRED JAMES, MORTON ALEXANDER, FRANKLIN ALEXANDER, ARNOLD GHINGER, RICHARD BROOKS, WALTER BROOKS, JEAN FOREST, PHILIPPA POSE, WESLIE BOYER, JOYCE SURIK, and MARJORIE PHYFE, : Docket Nos.

Defendants. :

- x

PRE-TRIAL BRIEF FOR DEFENDANTS

STATEMENT OF FACTS

The Port of New York Authority ("Port Authority") is a corporate body created pursuant to a compact between the States of New York and New Jersey and to legislation of those two States enacted pursuant thereto. N.Y. Unconsolidated Laws §§ 6401-6423 (McKinney 1961). It is jointly owned and operated by those two States. One of the main purposes for which it was established is "better-co-ordination of the terminal, transportation and other facilities of commerce in, about and through the Port of New York . . . ." N.Y. Unconsol. Laws § 6401. No private party owns any interest whatever in the Port Authority. The Port Authority conducts its various activities solely and exclusively for public purposes.

The Port Authority owns and operates a bus terminal known as the Port Authority Bus Terminal in the Borough of Manhattan. That terminal occupies one full city block. Next to Times Square, the Port Authority Terminal is probably the most "public" place in New York City. It is bounded on the North by 41st Street, on the South by 40th Street, on the East by Eighth Avenue, and on the West by Ninth Avenue. It has entrances on all of those streets. The terminal building is a narrow rectangle with its longer axis running East and West between Eighth and Ninth Avenues. The main lobby of the terminal consists of a long passage approximately 50 feet wide running the length of the building from Eighth Avenue to Ninth Avenue. On either side of this passage are various facilities or "concessions" operated by various private businesses. One such concession, a "ticket counter," situated near the Eighth Avenue entrance on the south side of the main lobby, is operated by Safeway Trails, Inc. ("Trailways"), which operates public interstate buses as part of a national system of "Trailways" buses.

It is expected that evidence produced at the trial will establish the following facts, among others.

On November 7, 1964, a group of people under the direction and supervision of a member of the staff of the Congress of Racial Equality ("CORE") entered the Eighth Avenue entrance of the Terminal, distributed picket signs and handbills among certain of the group's members, and set up an orderly picket line in front of part of the L-shaped ticket counter of the Trailways concession on the south side of the lobby approximately 130 feet from the Eighth Avenue entrance. The picket line consisted of a continuous line bent into the shape of an L to conform to the shape of the Trailways ticket counter. It was no more than six or seven feet wide at its widest place. The dimensions of the picket line conformed to those of a rope barricade set up by the Port Authority Police for the apparent purpose of assuring public access to all stalls of the Trailways ticket counter throughout the course of the picketing. Such public access was maintained throughout, since the police barricade kept the picket line a number of feet away from the ticket counter and public access was possible at either end of the line. The picket line consisted of more than 20 people. It may have had as many as 35 members at one time.

The purpose of the picket line was to bring to public attention--and to the attention of potential Trailways customers in particular--certain instances of racial discrimination in hiring and advancement practices which CORE regarded as establishing the existence of a pattern of such discrimination in the employment practices of that company in violation of an agreement between Trailways and CORE made during a long series of previous negotiations. The nature of CORE's dispute with Trailways was set forth in handbills which were distributed in the general vicinity of the picket line, and the existence of such a dispute was indicated on the signs carried by the picketers. The activities of the picketers consisted of walking the circuit of the ticket line (some of them with signs), the saying of certain antidiscrimination responsive chants (such as "Go railways --

not Trailways!", "Jim Crow——must go!" and "Freedom——now!") and the singing of certain civil rights hymns (such as "Ain't going to let nobody turn me 'round." and "We shall overcome.")

The picket line was organized sometime between noon and 12:30 P.M. A substantial number of Port Authority Policemen were at the scene under the direction of Captain Slawsky. After the picketing began, a series of intermittent conversations took place between the CORE "picket captain" in charge of the picket line and a lawyer representing the picketers on the one side and Mr. Ruppert (manager of the terminal), Mrs. Skehan (General Counsel of the Port Authority), Mr. Falvey (an attorney for the Port Authority), and Captain Slawsky on the other. The upshot of these conversations was a disagreement as to the legality of picketing and handbill distribution inside the terminal building (as against such activity on the sidewalk outside) and a refusal on the part of the picket captain to remove the picket line from the terminal.

Some time between 1:15 and 1:45 P.M., a number of Port Authority policemen came up to the picket line, arrested the defendants herein, took them to the 40th Street entrance to the terminal and turned them over to members of the New York City Police Department. In the custody of the New York City policemen, the defendants were segregated by sex and transported in two different police vans to the 14th Precinct station house, where they were questioned, the answers to their questions recorded, detained approximately two hours, served with summonses charging them with "violation of 722 - 2 & 3," and released. Complaining statements were ultimately signed by certain of the arresting Port Authority policemen charging the defendants with violation of "Section 722(2), (4) of the Penal Law." At arraignment all of the defendants pleaded not guilty.

The picket line was completely orderly at all times. No violence was ever threatened by any of the demonstrators, no violent, abusive, indecent, or "fighting" words were used, nor was any suggestion made at any time to the picket captain or to his attorney that violence was feared by the Port Authority officials. A substantial complement of Port Authority policemen was present at all times. All police instructions as to the location, dimensions, and other details of carrying on the picket line were scrupulously obeyed. The only refusal of any official order or request was the refusal of the picket captain (on advice of counsel that his picket line and handbill demonstration was an exercise of freedom of expression protected by the First Amendment to the Federal Constitution so long as it remained peaceful, orderly, nonviolent, and in compliance with all reasonable police instructions) to remove his people from the terminal to the sidewalk outside.

I

APPLICATION OF § 722, SUBDS. (2) AND (4) OF THE PENAL LAW TO THE FACTS OF THIS CASE

The pertinent portions of Section 722 of the Penal Law provide as follows:

> "§ 722. Disorderly conduct
>
> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> ". . . .
>
> "2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;
>
> ". . . .
>
> "4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd. . . ."

1. The gravamen of a charge of violating Section 722 of the Penal Law is breach of the public peace through actual or threatened violence or disorder or the practical equivalent thereof.

People v. Nixon, 248 N.Y. 182 (1928), was a case much like the present one. In Nixon a group of persons picketing in a public place in a physically peaceful and orderly (but apparently somewhat noisy) manner were arrested, charged, and convicted under Section 722. The Court of Appeals, in an often-quoted and highly authoritative opinion by Judge Lehman, reversed the convictions on the ground that "no circumstances have been shown which would give the color of disorder and violence to conduct which is otherwise colorless." (Emphasis supplied.) 248 N.Y. at 187. Judge Lehman made perfectly clear in his opinion that under the law of New York mere words, even annoying ones, uttered by peaceful and orderly pickets may not be made the basis for a criminal conviction under Section 722 in the absence of proven facts sufficient to sustain a reasonable inference "that the conduct of the defendants was intended as a threat, or could be so construed, or was an incentive to violence by others." If violence is threatened by others, the attendant police officers have a legal duty "to protect persons from threatened wrong and to prevent disorder". 248 N.Y. at 187-88. The Nixon case is still the law of New York. People v. Carcel, 3 N.Y.2d 327, 332 (1957). See also, People v. Donegan, 19 Misc.2d 541, 191 N.Y.S.2d 701 (1959) (Ct. of Sp. Sessions, City of N.Y., App. Pt., 1st Dept., 1959, Gassman, P.J.) (Conviction under § 722(2) reversed on ground that peaceful picketing is an exercise of free speech guaranteed by the Constitution of the United States and that "the act of picketing, alone, did not warrant the defendant's conviction of disorderly conduct, unless other acts on her part tended to, or were likely to, provoke a breach of the peace."); People v. Remson, 188 Misc. 21, 63 N.Y.S.2d 860 (Magistrate's Ct., City of N.Y., Queens, 1946, Soffer, M.) (Disorderly conduct charges dismissed where a number of picketers (1) ignored a police order forbidding them to picket inside a municipal airport, (2) entered the airport, and (3) there engaged in picketing which did not involve fraud, violence, threats or intimidation (expressed or implied) or the making of any false statements. The ground for dismissal was that the police order was "based solely on the ground that defendants desired to exercise their constitutional right of free speech, of which picketing is only a form.")

At the beginning of this century, Judge Vann stated the same principle in People v. Most, 171 N.Y. 423, (1902): "A breach of the peace is an offense well known to the common law. It is a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community." That principle, with its emphasis upon actual or threatened violence, has been restated and followed countless times by the courts of New York during the last half century. Fifty-two years after People v. Most, Judge Desmond applied the same concept of violence as the gravamen of a "disorderly conduct" charge when he wrote an opinion for the Court of Appeals sustaining a conviction under Section 722 upon the ground that a violent physical assault upon a policeman in an attempt to take his night stick away from him would constitute a "substantial interference" with or disturbance of a reasonable man witnessing such a scene and would, therefore, be a "breach of the peace" within the meaning of that section. People v. Harvey, 307 N.Y. 588 (1954).

In this case none of the acts done by the defendants in the course of their picketing demonstration had the slightest "color of disorder and violence." None of their acts were "intended as a threat," nor were any of them so construed. Nothing the defendants did could reasonably be regarded as "an incentive to violence by others": there were no "fighting words." These defendants simply engaged in a free speech picketing demonstration in a completely orderly and disciplined manner in accordance with instructions provided by the supervising police officers.

2. In order to establish the requisite criminal intent under Section 722, the People must prove either (a) that the acts complained of were done "with intent to provoke a breach of the peace" or (b) that those acts were performed by the defendants with knowledge that a "breach of the peace" was likely to "be occasioned" thereby.

Although it is atrociously drafted from the standpoint of grammar and respectable English usage, Section 722 of the *Penal Law* is well organized, and it conveys its meaning quite clearly. The introductory paragraph establishes the requirement of criminal intent or *mens rea*, and the numbered subdivisions list the specific kinds of acts which constitute a violation of the statute, *if* they are done with the requisite intent.

The cases establish quite clearly that in order for a conviction under Section 722 to be sustained, the People must prove beyond a reasonable doubt either (a) that the acts complained of as falling within one of the numbered subdivisions were done "with intent to provoke a breach of the peace" (*i.e.*, to incite others to violence or disorder) or (b) that such acts were done with knowledge that a "breach of the peace" was likely to "be occasioned" thereby. The requisite knowledge of likely consequences can be inferred from the performance of acts reasonably likely to provoke others to commit breach of the peace. In People v. Ferrara, 17 N.Y.S.2d 696, 697 (City Ct., New Rochelle, 1940), Justice Fasso stated the pertinent principle quite succinctly:

> "Generally, to constitute disorderly conduct, two elements must be presented--first, the defendants must have committed one of the acts prohibited by the section; and, secondly, the acts must have been committed under circumstances likely to cause a breach of the peace, or with an actual intent to provoke a breach of the peace."

Accord, People v. Rabey, 48 N.Y.S.2d 937, 939 (County Ct., Broome Co., 1944, McAvoy, J.); People v. Vest, 11 A.D. 2d 1080, 206 N.Y.S.2d 471 (4th Dept. 1960); People v. Szepansky, 25 Misc.2d 239, 240, 203 N.Y.S.2d 306 (County Ct., Steuben Co., 1960, Gabrielli, J.).

In the present case, none of the defendants did anything at all even remotely suggestive of violence or disorder, nor was there any indication that any of their acts were done "with intent to provoke a breach of the peace" within the meaning of Section 722. All of the defendants were completely orderly at all times; in fact, they were walking the fixed pattern of a picket line. None of them was in any way violent, nor did any of them attempt to incite anyone else to violence or disorder. Since none of the defendants' acts were such that a "breach of the peace" was likely to "be occasioned" thereby and since their behavior did not indicate "intent to provoke a breach of the peace," no violation of Section 722 took place.

II

THE PORT AUTHORITY BUS TERMINAL IS UNQUESTIONABLY A "PUBLIC PLACE" AND "PUBLIC PROPERTY." THEREFORE, THE PICKETING AND HANDBILL DISTRIBUTION ACTIVITIES OF DEFENDANTS CONSTITUTED EXERCISE BY THEM OF RIGHTS TO FREEDOM OF EXPRESSION GUARANTEED BY THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION.

In Marsh v. Alabama, 326 U.S. 501 (1946), the Supreme Court held that the streets of a "company town" owned in its entirety by the Gulf Shipbuilding Corporation (a private, profitmaking corporation) were a "public place" because the owner held that part of its property open "for use by the public in general." The Court went on to hold that the distribution of persuasive literature and oral attempts to convert persons on the streets to the Jehovah's Witnesses faith were activities protected by the First Amendment which could not be made the basis for a criminal conviction. Accord, Watchtower Bible and Tract Society v. Metropolitan Life Insurance Company, 297 N.Y. 339 (1948) (Owner of a privately-owned residential community composed of land, streets and other public places, and residential apartment buildings could not prohibit distribution of literature and oral presentation of religious arguments for purposes of conversion "on streets, sidewalks, or other public or quasi-public places.") Marsh v. Alabama was cited with approval and followed by the Court of Appeals in Dorsey v. Stuyvesant Town Corporation, 299 N.Y. 512 (1949), and in Danbois v. New York Central Railroad, 12 N.Y.2d 234 (1963).

In People v. Barisi, 193 Misc. 934, 86 N.Y.S. 2d 277 (City Magistrate's Ct. of N.Y., Manhattan, 1948, Andrews, M.), the two issues squarely presented were: (1) whether or not the Pennsylvania Station is a public place for purposes of applying First Amendment protection to acts therein and (2) whether or not the refusal of orderly pickets demonstrating against a private concession in the terminal to obey police orders to cease their activities within the station could properly constitute the basis for a disorderly conduct conviction. The court held (a) that the Pennsylvania Station is a public place and therefore one within which the rule of Marsh v. Alabama applies, (b) that the conduct for which the defendants were arrested was not reasonably calculated to "provoke or incite others to breach of the peace," and, therefore, (c) that the arrests constituted a violation of the First Amendment rights of the defendants and were therefore invalid, and (d) that the complaints should be dismissed and the defendants discharged.

In Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), the Supreme Court held that a privately-owned restaurant occupying leased space located in a building owned and operated by the Wilmington, Delaware, Parking Authority was sufficiently affected with a public interest to justify application of constitutional safeguards to the customers who came to that restaurant for service.

In Farmer v. Moses, 232 F. Supp. 154 (S.D.N.Y. 1964), Judge Tyler held that the New York World's Fair 1964-1965 Corporation (a private corporation organized for exclusively "educational" purposes under the New York Membership Corporations Law) and its operations (conducted on land leased from the City of New York and with twenty-four million dollars provided by the City of New York) were "so impregnated with and supported by state and city action" as to make the provisions of the First Amendment applicable to picketing and handbilling activities conducted on or near the Fair's grounds by operation of the Fourteenth Amendment (citing Marsh v. Alabama, supra). Judge Tyler wrote (232 F. Supp. at 158): "Upon the uncontested facts here, it would be sophistry to argue or conclude that the Fair is a completely private venture, even if it is operated by a private corporation." He went on to place certain equitable restrictions upon the right of plaintiffs in the case before him to exercise their First Amendment rights, but he was careful to point out that the case would have been completely different "if the streets and walkways of the Fair were open and accessible and without such barriers as fences, gates, and ticket windows." (232 F.2d at 161.)

In this case the Port Authority is not a private corporation like the World's Fair Corporation. It is a "public corporation." The Port Authority Bus Terminal is not fenced in and operated for profit by the charging of admission to those who would avail themselves of its facilities. It is a completely open public facility extremely similar to the municipal airport which was held to be a public place from which the police could not legally exclude orderly pickets in People v. Remson, 188 Misc. 21, 63 N.Y.S.2d 860 (Magistrate's Ct., City of N.Y., Queens Co., 1946, Soffer, M.), and completely indistinguishable from the railway terminal held to be a "public place" in People v. Barisi, supra.

III

WHEN THE PORT AUTHORITY POLICEMEN ASSISTED IN SETTING UP THE PICKET LINE BY PROVIDING A ROPE BARRICADE AND OTHER HELPFUL DIRECTIONS, THEY GAVE TACIT "PERMISSION" TO THE CONDUCT OF THE PICKET LINE WHICH THE PORT AUTHORITY OFFICIALS COULD NOT REVOKE, UNDER THE HOLDING OF COX v. LOUISIANA, EXCEPT IN EXTREMELY COMPELLING CIRCUMSTANCES, SUCH AS THREATENED, UNCONTROLLABLE VIOLENCE, WHICH WERE NOT PRESENT WHEN DEFENDANTS WERE ARRESTED.

Neither the Port Authority Policemen nor any of the Authority officials present objected to or forbade the initial establishment of the picket line in this case. In fact, the policemen assisted in setting up the picket line by providing a rope barricade and other directions to indicate reasonable dimensions of the line. All suggestions or directions by the police as to the methods of conducting the picket line were scrupulously obeyed.

Therefore, there was tacit "permission" to conduct the picket line in this case within the holding of Cox v. Louisiana, 33 U.S.L. Week 4105, 4108-9 (U.S. Jan. 18, 1965). In the Cox case, 2,000 peaceful and orderly demonstrators marched to the courthouse in Baton Rouge, Louisiana. When they arrived at a point across the street from the courthouse, the Reverend B. Elton Cox, leader of the demonstrators and a CORE Field Secretary, explained to the Chief of Police and other City officials the length of time the demonstration would take and what it would consist of. The Police Chief indicated that the demonstrators should confine their activities to the west side of the street, away from the courthouse. The demonstration, which was to consist of prayers, a speech, and the singing of "freedom songs," was then allowed to commence.

Before the demonstration was completed according to the announced plan, the Sheriff proclaimed over a loudspeaker that the demonstration was over and that the demonstration "has to be broken up immediately." Reverend Cox ordered his people not to move. The Supreme Court, in an opinion by Mr. Justice Goldberg, held, *inter alia*, in reversing affirmance of a conviction by the Supreme Court of Louisiana, (1) that in directing the demonstrators to the situs of their activities and failing to forbid the commencement of such activities, the responsible officials gave tacit "permission" for the announced activities to be conducted and (2) that such permission to conduct an activity within the ambit of freedom of expression, once given, could not be revoked except for some extremely compelling reason peculiar to the circumstances, such as a threat of imminent violence on the part of the onlooking crowd beyond the powers of attendant policemen to maintain order. Justice Goldberg grounded the Court's decision in the strong constitutional policy of protecting freedom of expression reasonably exercised from suppression except for extremely strong, factual reasons.

IV

IN COX V. LOUISIANA, THE UNITED STATES SUPREME COURT HELD THAT AN ORDERLY AND DISCIPLINED PROTEST DEMONSTRATION INVOLVING HYMN-SINGING AND PRAYERS BY 2,000 PERSONS IN A PUBLIC PLACE CONSTITUTED AN EXERCISE OF FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT WHICH COULD NOT VALIDLY FORM THE BASIS FOR A DISORDERLY CONDUCT CONVICTION. SINCE THE PRESENT CASE INVOLVED SUBSTANTIALLY LESS DISTURBANCE THAN WAS INVOLVED IN COX, THE HOLDING OF THAT CASE APPLIES HERE, AND THE PROSECUTION MUST THEREFORE BE DISMISSED AS A MATTER OF LAW.

In *Cox v. Louisiana*, 33 *U.S.L. Week* 4099, 4101-4103 (U.S. Jan. 18, 1965), the Reverend B. Elton Cox led an orderly and disciplined protest demonstration of 2,000 Negro college students to a place across the street from the courthouse in Baton Rouge, Louisiana. The demonstration (which, like the one in the present case, was peaceful, orderly, and well supervised) consisted of prayers and hymn-singing by the demonstrators and a speech by Reverend Cox. Some of the demonstrators carried picket signs objecting to racial discrimination.

Reverend Cox was convicted of disorderly conduct under a statute of Louisiana identical for all practical purposes to § 722 of the *New York Penal Law*. In an opinion by Mr. Justice Goldberg, the Supreme Court held that "on the facts of this case . . . Louisiana infringed appellant's rights of free speech and free assembly by convicting him under this statute . . . . We hold that Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals . . . ." (33 *U.S.L. Week* at 4101.) The Court went on to hold that by holding the demonstration in question to be punishable as disorderly conduct, the Louisiana Supreme Court had rendered the statute unconstitutionally vague and excessively broad in scope.

If the demonstration involved in the Cox case was a constitutionally protected activity under the First Amendment, then there can be no question about the acts of the relative handful of defendants in this case being equally entitled to constitutional protection. Thirty people in a huge bus terminal cannot possibly create anything like the noise of 2,000 lusty college students singing hymns within 100 feet of a courthouse.

The charges must therefore be dismissed.

CONCLUSION

For the reasons stated above, we respectfully submit that the charges in this case should be dismissed.

April 15, 1965

Respectfully submitted,

MARVIN MOSES KARPATKIN
660 Madison Avenue
New York, N. Y. 10021

CARL RACHLIN
38 Park Row
New York, N. Y. 10038

GEORGE SCHIFFER
40 East 49th Street
New York, N. Y. 10017

JULES E. ZALON
1301 Sixth Avenue
New York, N. Y. 10019

Attorneys for Defendants
Jack Dews, Allen Kimbrell,
Jennifer Miller, Ronald Riley,

Allen Cherry, Robert Auerbach,
Richard Murphy, Alfred James,
Morton Alexander, Franklin
Alexander, Arnold Ghinger,
Richard Brooks, Walter Brooks,
Jean Forest, Philippa Pose,
Weslie Boyer, and Joyce Surik.

BRADLEY R. BREWER
1 Chase Manhattan Plaza
New York, N. Y. 10005

Attorney for Defendant
Marjorie Phyfe.

Marvin M. Karpatkin
Bradley R. Brewer

Of Counsel

CRIMINAL COURT CITY OF NEW YORK
COUNTY OF NEW YORK

-------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

NOTICE OF APPEAL

- against -

ROBERT AUERBACH, ARNOLD GHINGER, ALLEN KIMBRELL,
RICHARD BROOKS, LESLIE BOYER, RICHARD MURPHY,
PHILIPPA POZE, MARJORIE PHYFE, JOYCE SHURIK,
WALTER S. BROOKS, ALLEN CHERRY, FRANKLIN ALEXANDER,
MORTON ALEXANDER and ALFRED JAMES
DOROTHY THOMPSON,

Defendant~~s~~-Appellant~~s~~.

-------------------------------------x

SIRS:

PLEASE TAKE NOTICE, that the defendant~~s~~ herein hereby appeals from the judgment of conviction rendered against ~~them~~ her in this Court for violation of Section 722 of the Penal Law on the 18th day of OCTOBER ~~May, 1965~~, and from each and every intermediate order therein made and ~~more particularly~~ from the sentence herein imposed on ~~the same day by Hon. Irving I. Schweckinger, Judge~~ the 18TH OF NIVEMBER, 1966 IN PART 2A, said sentence being suspended.

Dated: New York, New York
June 2, 1965

Yours, etc.

STEPHEN M. NAGLER, Esq.
Attorney for Defendants
Office & P.O. Address
~~c/o George Schiffer~~
~~40 East 49th Street~~
~~New York, N. Y.~~
Rm 1030
150 Nassau Street
N.Y., N.Y. 10038

TO: HON. FRANK S. HOGAN, District Attorney
New York County
155 Leonard Street
New York 13, New York

CLERK, CRIMINAL COURT NEW YORK COUNTY
100 Centre Street
New York 13, New York

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ATTORNEY CARL RACHLIN, NATIONAL CORE LEGAL COUNCIL
38 PARK ROW NYK

WE ARE INVOLVED IN THE TRIALS FOR 16 DEMONSTRATORS ARRESTED AT A CONSTRUCTION SITE. WE ALSO ARE FACING AN IMMEDIATE COURT FIGHT TO ENJOIN SITE DEMONSTRATIONS. SEND IMMEDIATELY AIR MAIL SPECIALS ANY MATERIALS, BRIEF CASES OR OTHER AIDS. WE ARE IN URGENT NEED. THE CITY HAS FILED A MOTION FOR A BLANKET INJUNCTION AGAINST APPEARING ON ALL SITES

WEBSTER W POSEY LEGAL COUNCIL 18EAST FOURTH ST ROOM 800 CINCINNATI OHIO

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9. Neither I nor any member of my family has any savings or checking account.

10. Neither I nor any member of my family owns any stocks or bonds.

11. I and my family are indigent.

12. I cannot afford a lawyer or otherwise pay the expenses necessary to perfect the within appeal, nor are my parents able or willing to assist me in this matter.

13. I am innocent of the charge upon which I was convicted. I believe my appeal to be meritorious and it is not taken for the purpose of delay.

14. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq., of the CORE Legal Department.

15. If the Court is disposed to permit me to appeal as a poor person, Marvin M. Karpatkin, Esq. has consented to represent me on this appeal and agrees to do so without any compensation whatsoever, and if the Court is disposed to assign him, I desire that he represent me on the within appeal.

16. Neither I nor to the best of my knowledge, any other defendant at the trial of this case were requested or actually paid any compensation to Marvin M. Karpatkin, or any of the attorneys associated with him in representing defendants at the trial of this case or at any other stage of the proceedings.

17. I am not now incarcerated.

18. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I ask permission to prosecute this appeal as a poor person on the original record and typewritten briefs, and that the Court assign Martin M. Karpatkin as attorney and counsel for that purpose without compensation.

Jack Dews
JACK DEWS

Sworn to before me this
9th day of August 1965.
Hallie M. Taylor
HALLIE M. TAYLOR
Notary Public, State of New York
No. 60-9293775
Qualified in Westchester County
Commission Expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK
APPELLANT TERM: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT

ARNOLD GHINGER, ALLEN KIMBRELL, RICHARD BROOKS, ~~RICHARD~~ AUERBACH,
LESLIE BOYER, RICHARD MURPHY, PHILLIPA POZE, MARJORIE PHYFE,
JOYCE SHURIK, ALLEN CHERRY, FRANKLIN ALEXANDER ALFRED JAMES,

Defendants-Appellants

-and-

JACK DEWS, JEAN FOREST, JENNIFER MILLER, RONALD RILEY,

Defendant-Appellants,

Index # 41412-'65
Cal. # 139-'66

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, between the undersigned attorneys for the parties captioned above, that on the basis of the attached affidavit of STEPHEN M. NAGLER:

1. An order be entered reinstating the appeals the above captioned cases and placing them on the calendar for the September Term, 1966.
2. An order be entered that the appeals in the above captioned cases be joined and consolidated for all purposes.

Respectfully Submitted,

Frank S. Hogan, Esq.
District Attorney of New York County
155 Leonard Street
New York, New York

per____________________
Alan F. Leibowitz

Attorney for Respondents

____
Stephen M. Nagler
c/o of CORE
38 Park Row
New York, New York

Marvin M. Karpatkin
Marvin M. Karpatkin
660 Madison Avenue
New York, New York

ATTORNEYS FOR DEFENDANTS-APPELLANTS

SUPREME COURT OF THE STATE OF NEW YORK
APPELLANT TERM: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT AUERBACH, et. al,

Defendant-Appellants

and

JACK DEWS ēt al Defendant-Appellants

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS,:

STEPEEN M. NAGLER, ESQ., being duly sworn deposes and says:

1. I am an attorney for the Congress of Racial Equality and associate of Marvin Karpatkin and Carl Rachlin, and as such I am familiar with the facts in this case.
2. All of the above named defendant-appelants were represented by the Marvin Karpatkin at their trail before the Honorable Irving Schreckinger, Judge of the Criminal Court of the City of New York, on and about the 5th day of May, 1965. The Defendants were convicted of violating Section 722 of the Penal Law.
3. Although all of the Defendants were tried together, two separate Notices of Appel were filed separating the Defendant-Appelants into two groups as they are separated on the caption of Appeal.
4. My name appears on the Notice of Appeal counsel to the former group.
5. The failure to prosecute these appeals in due time is explained by the fact that although minutes were ordered to be prepared at the expense of the State of New York on August 20th, 1965, in the case of Jack Dews, et al, and appellants were ordered to perfect their appeal for the October Term, 1965, the minutes were not, in fact, made available to counsel until the latter part of April, 1966.

although, on informationa and belief, said minutes were filed in this Court during the month of March. The delay was through no fault of any attorney for appellants or any of the appellants themselves. During the intervening period, there would have been no point in moving this court for an extension of time in which to prosecute the appeal since counsel had no idea of the date by which the minutes would be ready.

6. In addition, counsel wished to await a final determination in the case of People v. Penn which wax made at approximately end of April, 1966.

7. The questions of law and fact presented in the cases of all defendants named in the caption are identical. In fact, their trials are all represented in the same set of minutes.

8. In both sets of cases the defendantsappellants entered a public building and proceeded in a peaceful and orderly manner to exercise their constitutional rights and, based on this, it is my feeling that important questions of law and fact will be presented in these appeals.

9. Neither I nor any attorney who is or has represented any of the defendant-appellants in any stage of this proceedings has solicited or received any fee (whatsoever) for his services or expenses; nor will any fee be sought or accepted by any of said attorneys.

10. No previous application has been made to this or any other court for the relief sought.

WHEREFORE, your deponent prays that an order be entered setting aside the orders dismissing the appeals of Robert Auerbach, et a. pursuant to Rule 111 (11) (c) Rules of the Appellant Term, First Department and Jack Dews et al, for failure to prosecute and consolidating these appeals and for a further order granting an extension of time in which to perfect the appeal to the September Term 1966.

sworn to before me this
day of 1966

Stephen M. Nagler

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Term: First Department

---x

People of the State of New York,
Respondent

Index No.:
41412/65

-against-

Robert Auerbach, Arnold Ghinger, Allen Kimbrell,
Richard Brooks, Leslie Boyer, Richard Murphy,
Phillipa Poze, Marjorie Phyfe, Joyce Shurik,
Allen Cherry, Franklin Alexander, and Alfred James
Alle
Defendants-Appellants

and

Jack Dews, Jean Forest, Ronald Riley, and
Jennifer Miller,
Defendants-Appellants

---x

AFFIDAVIT

Stephen M. Nagler, Esq., being duly sworn, deposes and says:

1. I am the attorney for Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Phillipa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander, and Alfred James.

2. On or about the 15th day of August, 1966, this Court ordered that the cases of all defendants listed in the caption be consolidated. A copy of said Order and the Motion and Affidavit upon which it was entered are annexed hereto and made a part hereof.

3. Marvin M. Karpatkin represents defendants Jack Dews, Jean Forest, Ronald Riley, and Jennifer Miller.

4. Defendants Dews, Forest, Riley and Miller were granted permission by this Court to appeal as poor persons. Said minutes are now on file in the office of the Clerk of the Appellate Term.

5. As stated in my previous affidavit which accompanied the Motion to Consolidate, all of the defendants listed in the caption

were arrested together, arraigned together, tried together, and sentenced together. There is no manner in which the minutes in the cases of Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Phillipa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander, and Alfred James are in any way distinguishable from the minutes in the cases of Jack Dews, Jean Forest, Ronald Riley, and Jennifer Miller, presently on file in the office of the Clerk of the Appellate Term.

6. It would therefore be thoroughly meaningless and redundant to file additional minutes in the cases of Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Phillipa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander, and Alfred James, particularly in view of the fact that these cases have been consolidated with the cases of Jack Dews, Jean Forest, Ronald Riley, and Jennifer Miller.

WHEREFORE your deponent respectfully prays that the attached orders be entered permitting the perfection of the appeal on the papers listed therein and the minutes presently on file in the office of the Clerk, and dispensing with the filing of additional minutes in the case of People v. Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Phillipa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander, and Alfred James.

Stephen M. Nagler, Esq.

Sworn to before me
this 17th day of October, 1966

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Term: First Department

---x

People of the State of New York,
Respondent

Index No.:
41412/65

-against-

Robert Auerbach, Arnold Ghinger, Allen Kimbrell,
Richard Brooks, Leslie Boyer, Richard Murphy,
Phillipa Poze, Marjorie Phyfe, Joyce Shurik,
Allen Cherry, Franklin Alexander, and Alfred James
Defendants-Appellants

and

Jack Dews, Jean Forest, Ronald Riley, and
jennifer Miller,
Defendants-Appellants

---x

ORDER

Upon the affidavit of Stephen M. Nagler, Esq., attorney for Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Phillipa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander, and Alfred James, and upon the subjoined consent of Frank Hogan, Esq., District Attorney of New York County by Alan F. Scribner, for respondent, People of the State of New York, and the order of the Appellate Term, dated August 15, 1966, consolidating the above-named appeals and upon all of the papers and proceedings herein, it is

ORDERED that the appellants Auerbach, Ghinger, Kimbrell, Brooks, Boyer, Murphy, Poze, Phyfe, Shurik, Cherry, Alexander, and James shall reproduce form the record on appeal the statements required by R. 5531, C.P.L.R. and Rule II (2) (C) of this Court, their Notice of Appeal, their criminal records, if any, the Clerk's return, Affidavit of No Opinion, the complaints and endorsements and certification by the attorney for such appellants, and it is further

ORDERED that the reproduction of the minutes of arraignment, trial and sentence need not be reproduced, the same being on file in the companion case of People v. Jack Dews, Jean Forest, Ronald Riley and Jennifer Miller.

The District Attorney of New York County representing the people of the State of New York consents to the entry of the above orders.

Frank S. Hogan, Esq.
District Attorney of New York County

By Alan F. Scribner
Assistant District Attorney

ENTER:

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part 2 A

PEOPLE OF THE STATE OF NEW YORK

-against-

WALTER BROOKS AND MORTON ALEXANDER,

Defendants.

STATE OF NEW YORK)
: SS,:
COUNTY OF NEW YORK))

STEPHEN M. NAGLER, ESQ., being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the Supreme Court of the State of NewYork. I represent the defendants named above.

2. The cases of the two defendants herein have been adjourned pendingthe disposition of 16 companion cases now before the Appellate Term,First Department, Supreme Court of the State of New York. The companion cases were argued during the present term of the Appellate Term. On information and belief, a decision by that court will not be forthcoming before the first of March, 1967.

3. I am presently serving as Legislative Counsel to the New York State Assembly.My duties require that during a substantial portion of this session of the Legislature, I be present in Albany on Mondays and Tuesdays. This is the reason for my failure to appear before this court on Monday, January 16th, 1967, and I beg the Court's indulgence at this time. At the time this case was last on the calendar of the Criminal Court, I was unaware that I would be holding this office, or

that any circumstance would prevent me from appearing on this date. I have informed my clients of my inability to appear on January 16th, 1967.

WHEREFORE, I RESPECTFULLY REQUEST that my absence and that of my clients be excused, and that the within matter be adjourned to Wednesday, April 5, 1967

Stephen M. Nagler

Stephen M. Nagler, Esq.

Sworn to before me

this 13th day of January, 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

File (Port Authority Case
or Continental Trailways case

Calendar No. 598

To Be Argued By
Marvin M. Karpatkin

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

JACK DEWS, ALLEN KIMBRELL, JENNIFER MILLER, RONALD RILEY, ALLEN CHERRY, ROBERT AUERBACH, RICHARD MURPHY, ALFRED JAMES, FRANKLIN ALEXANDER, ARNOLD GHINGER, RICHARD BROOKS, JEAN FOREST, PHILLIPPA POSE, LESLIE BOYER, JOYCE SCHURIK, and MARJORIE PHYFE,

Defendants-Appellants

- x

BRIEF OF DEFENDANTS - APPELLANTS

MARVIN M. KARPATKIN
660 Madison Avenue
New York, New York 10021

BRADLEY R. BREWER
59 Maiden Lane
New York, New York 10038

Attorneys for Defendants-Appellants

Of Counsel:

CARL RACHLIN
STEPHEN NAGLER

Calendar No. 598

To Be Argued By
Marvin M. Karpatkin

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

JACK DEWS, ALLEN KIMBRELL, JENNIFER MILLER, :
RONALD RILEY, ALLEN CHERRY, ROBERT AUERBACH, :
RICHARD MURPHY, ALFRED JAMES, FRANKLIN ALEXANDER, :
ARNOLD GHINGER, RICHARD BROOKS, JEAN FOREST, :
PHILLIPPA POSE, LESLIE BOYER, JOYCE SCHURIK, :
AND MARJORIE PHYFE, :

Defendants-Appellants :

- x

BRIEF OF DEFENDANTS - APPELLANTS

MARVIN M. KARPATKIN
660 Madison Avenue
New York, New York 10021

BRADLEY R. BREWER
59 Maiden Lane
New York, New York 10038

Attorneys for Defendants-Appellants

Of counsel:

CARL RACHLIN
STEPHEN NAGLER

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INTRODUCTORY STATEMENT

This case arose when the leader of a peaceful civil rights picket line which had been set up inside a public bus terminal, on approximately fifteen feet of a fifty foot wide arcade, refused to remove the line to the sidewalk outside the terminal. The terminal manager took the position that no picketing whatever would be tolerated within the terminal and that any such picketing was *per se* illegal. The same position was taken in the People's trial memorandum where it is stated (at p. 23) that:

> ". . . it was made clear to the defendants here that, whatever their message might be, the interior of the bus terminal is not an appropriate place in which to convey it."

The picket leader, acting under the advice of an attorney who was present, attempted to remonstrate that the fifty-foot wide arcade of the terminal is, for all practical purposes, a public thoroughfare just like the sidewalk outside the terminal (where the leader was advised the picket line would be permitted). He contended that the picketers were reasonably exercising their right to freedom of speech in a public place and were thus protected by the Federal Constitution.[1]

---

[1] Counsel for defendants was not permitted to establish at trial that the sidewalk on Eighth Avenue, to which the pickets were referred and on which they were permitted to picket on two subsequent Saturdays, is fifteen feet wide and subject to heavier pedestrian traffic than the fifty foot arcade in which they attempted to picket. (R-II, 307) Counsel for defendants has personally measured the sidewalk and found its width to be 15 feet. Counsel also witnessed picketing demonstrations conducted there on two subsequent Saturdays under police supervision without arrests being made.

When the picket leader refused to remove the line from the terminal, the terminal police were instructed by its manager to "do your duty," and immediately thereafter the picketers were arrested and subsequently tried and found guilty of violating Section 722, subdivisions (2) and (4) of the Penal Law.

PROCEDURAL STATEMENT

Defendants appeal from a judgment of the Criminal Court of the City of New York, County of New York, Part 3, Hon. Irving Schreckinger presiding, convicting them of disorderly conduct under Section 722, subdivisions(2) and (4) of the Penal Law. Trial commenced on April 15, 1965, and was completed on May 5, 1965. Judgment was entered on May 5, 1965. (The record is in two volumes corresponding to the two days of trial. These volumes are cited hereafter as R-I and R-II.)

At the conclusion of the trial, the court found all of the defendants guilty and, the 48 hour requirement having been waived, imposed suspended sentences upon all of them.[1]

An oral opinion was rendered by Judge Schreckinger which appears in the record at R-II, 314-320. The decision was based upon the following particular conclusions of law, which Defendants claim to be fatally erroneous:

---

[1] The cases of two other defendants, Walter Brooks and Morton Alexander, who were absent from trial for reasons excused by Judge Schreckinger, have been continued pending determination of the appeal of the present defendants.

(a) the required "breach of the peace" element of a 722 violation is satisfied and "intent to provoke a breach of the peace" is established where the acts of the defendants were "of such a nature that they should have known that what they were doing may have provoked a breach of the peace" (R-II, 314); and

(b) "the Constitution . . . did not intend that thes[e] rights of picketing . . . be extended . . . to . . . [an] enclosure such as the Port Authority building." (R-II, 315).

QUESTIONS PRESENTED

This case raises squarely a number of fundamental questions with respect to the exercise of freedom of expression in large, publicly owned, and completely open buildings such as air, train, and bus terminals and with respect to the application of the disorderly conduct statute to the expression and communication of ideas through the use of picket lines, placards, and the distribution of handbills.

Five principal questions are presented:

1. Was there sufficient proof to convict the defendants of all of the necessary elements of disorderly conduct,

including the breach of the peace element?

2. In the absence of any proven intent to cause a breach of the peace, can defendants be held guilty of disorderly conduct where the likelihood of a breach of the peace is negatived by the presence of police officers in sufficient numbers to control the situation?

3. Is the main East-West arcade of the Port Authority Bus Terminal, which runs from 8th to 9th Avenues and is 50 feet wide, and which is freely used by the general public as a pedestrian thoroughfare, "private property" of such a character, that peaceful picketing and handbill distribution which would be concededly lawful and constitutionally protected under the First Amendment if conducted on a city sidewalk, may be absolutely forbidden on such thoroughfare by the Terminal Manager?

4. Is Section 722 of the New York Penal Law unconstitutionally void for vagueness under the holding of Cox v. Lousiana, 379 U.S. 536 (1965)?

5. Were the defendants given permission by the authorities to continue their peaceful picketing, within the holding of Cox v. Louisiana, 379 U.S. 559 (1965)?

APPLICABLE STATUTE

The pertinent portions of Section 722 of the Penal Law provide as follows:

> "§ 722. Disorderly conduct
>
> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> ". . . .
>
> "2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;
>
> ". . . .
>
> "4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd. . . ."[1]

Statement of Facts

1. Purpose of the picket line and the circumstances involved in setting it up.

As the result of a dispute between the Congress of Racial Equality (CORE) and Safeway Trails, Inc. (Trailways) over alleged racial discrimination on the part of Trailways in its hiring and promotion practices, CORE decided to picket the Trailways ticket counter in the bus terminal operated by the Port of New York Authority in Manhattan between 40th and 41st Streets and between Eighth and Ninth Avenues. The purposes of the demonstration were to inform the public using the terminal of the existence of the dispute, to present CORE's view that Trailways had violated an agreement entered into with CORE and negotiated by the New York State Commission on Human Rights with respect to its hiring and promotion practices, and to encourage potential travellers on Trailways buses to use the services of other bus lines. (R-II, 116-118. Stipulated offer of proof.)

---

[1] It is informative to compare the text of the statute with the interpretation placed upon it in the People's trial memorandum, at pages 3 and 4:

> "Penal Law Section 722 declares that it is an offense if anyone
>
> > '2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;
> >
> > '4. By his actions causes a crowd to collect, except when lawfully addressing such crowd.'"

This interpretation, eliminating the "breach of the peace" portion of the statute as meaningless, would render the statute void for vagueness. Cox v. Louisiana, 379 U.S. 536, 551-552 (1965). See Point III, *infra*.

At approximately 12:15 or 12:30 p.m. on Saturday, November 7, 1964, between thirty and forty persons composing the CORE picketing contingent entered the Port Authority terminal and, under the direction of picket-captain Eric Mann, set up a picket line outside the L-shaped Trailways ticket counter. (R-I, 15-46; R-II, 112-124)

The Trailways ticket counter is situated on the north side of the main arcade of the terminal near the Eighth Avenue entrance. The main arcade is a passageway or concourse 50 feet wide running in a straight line between Eighth and Ninth Avenues. The Trailways counter is located on a corner where the east-west concourse widens toward the south to create a large open area. The two parts of the L-shaped counter face north onto the 50 foot arcade and west onto on open space approximately

40 feet wide. There is an open area approximately 6 feet wide between the front of the two counters and flower boxes which separate the Trailways area from the main lobby. Access to the counter is gained by walking between the flower boxes and up to the counter. The north part of the counter faces the 50-foot wide arcade; the west part faces an open space approximately forty feet wide, on the opposite or west side of which is an escalator. (See Blueprint, People's Exhibit 1; R-I, 18; testimony R-I, 15-46)

The picket line consisted of a continuous line bent around the L-shaped ticket counter outside the flower boxes and resembling a long, narrow loop bent into a right angle. At its largest, it contained approximately 30 to 40 persons. As the picket line was being formed, the Port Authority police set up a barricade consisting of metal stanchions connected by rope just outside the flower boxes. (For description, see R-I, 34, 68-69) The barricade, which corresponded to the L-shape of the picket line and established the dimensions of the line, was shorter at either end than the Trailways counter. Thus public access to the ticket counters was at all times possible at either end of the picket line. (R-I, 28, 65, 166) No significant complaints were made to the terminal authorities by Trailways or any other concessionnaire in the building (R-I, 81-82, 166), and interference with access to the counter was not alleged by the People as the basis for the arrest of the defendants.

(R-I, 75) The outer portion of the picket line extended approximately 12 feet out from the flower boxes and into the 50 foot arcade on the north and the 40-foot open area on the west. (R-I, 25) Thus a thoroughfare more than 35 feet in width was left free by the pickets for the movement of east-west traffic.

2. Conduct of the picketers.

As soon as the picketers began walking, they established a pattern of conduct which remained substantially unchanged for approximately 45 minutes, at which time the defendant picketers were arrested. Approximately half of the picketers carried signs suggesting that Trailways discriminated in its hiring policies and that prospective patrons should seek bus service elsewhere. (R-I, 201; R-I, 28, 74, 121) Periodically the picketers would sing "freedom songs" and call out responsive chants in which, for example, the leader would call out, "Jim Crow," and the picketers would respond with, "Must go!" (R-I, 48-49, 158; R-II, 23, 67)

Defendant Marjorie Phyfe began to distribute handbills in the east-west passage some distance from the picket line. She joined the picket line when a policeman told her that if she wanted to distribute the handbills she would have to join the line. She was distributing handbills on the line when arrested. (Uncontradicted testimony. R-II, 250-255.)

3. No objection made when the picket line was set up; no objection to noise or number of pickets.

The Port Authority officials made no objection to the establishment of the picket line. (R-II, 123-127) In fact, the Port Authority police assisted in its establishment by providing the rope barricade which kept the dimensions of the picket line within reasonable bounds and insured public access to the ticket counter. (*Ibid* and R-I, 24; R-II, 24) During the discussions which preceded the arrests, no objection was made by the Port Authority officials or police to the conduct of the picketers on the grounds that they were making noise; nor did they object to the volume of the singing and chanting (R-II, 142, 300); nor did they receive any significant complaints about it. (R-I, 166) No objection was made until the terminal manager appeared, some time after the picketing began. The record does not indicate that any objection was ever made by the terminal authorities either to the noise level or to the size of the picket line. In fact, the uncontradicted testimony of picket-captain Eric Mann (R-I, 175) and defendant Marjorie Phyfe (R-I, 256-257) established that the singing of the picketers in no way interfered with conversations held in a normal tone of voice a very few feet away from the line. Therefore, it could not have seriously interfered with the functioning of the terminal.

4. No violence, threats of violence, or any equivalent thereof.

At no time during the picketing was there any violence, fighting, riot, or use of abusive language either by the crowd or by the picketers; nor was any violent behavior imminent or anticipated by the police. (R-I, 198; R-II, 120) The prosecution witnesses gave no indication that the situation during the picketing in any way involved violence or its counterpart in abusive, threatening or obscene language.

5. Presence of police in sufficient numbers.

Indeed, the number of policemen on hand or on call was more than sufficient to maintain control over the situation if any indications of potential violence had appeared in the crowd. The terminal manager, Mr. Rupert, testified that approximately 35 officers were on duty in the terminal at the time of the picketing (R-I, 87, 182). Counsel was improperly prevented by the Court from inquiring as to the availability of further reinforcements (R-I, 90, 192), but it is perfectly clear from the record that the number of police present was more than sufficient to keep the situation completely under control at all times. (R-I, 196-199)

6. The arrests.

(a) Pre-arrest discussions.

Soon after the picketing commenced, Mr. Ruppert, Manager of the Terminal, approached Eric Mann, the CORE picket-captain, and stated that the picket line was something that had never been done before in the terminal, that it "was an unauthorized act," and that it "was interfering with the normal and efficient operation of the terminal." (R-I, 47) He requested that Mr. Mann "take the group outside" and "set up outside any of the entrances." (R-I, 47) This legally erroneous position--that picketing is "unauthorized" and impermissible inside the terminal arcade but is permissible on the sidewalk outside the terminal entrances--was maintained throughout discussions between Mr. Ruppert and Mr. Mann. (R-I, 53) At this time Mann stated that he had been advised that picketing in the terminal was "a legal activity" and that he was awaiting the arrival of counsel. (R-II, 127)

When the attorney for the picketers, Mr. Jules Zalon, arrived, a series of further discussions took place between Mr. Rupert and Port Authority counsel, Mr. Falvey and Mrs. Skehan, on the one side, and Messrs. Mann and Zalon on the other. These discussions took place over a period of about thirty minutes. (R-II, 287) Mr. Ruppert maintained his "request" that the picket line be removed from the terminal (R-I, 61) and his position that such activity inside the terminal was unauthorized and illegal. He informed Mr. Zalon and Mr. Mann that no picketing of any kind would be tolerated in the terminal building and that if the picketers remained, they would be arrested for disorderly conduct.[1] (R-II, 286; R-I, 53) Mr. Zalon correctly advised his clients that the terminal was "an obviously public area" and that the picketers were reasonably exercising their constitutional right to freedom of speech and therefore had a right to continue their picketing. (R-II, 282-284) When Mr. Mann refused to remove the picket line from the building, Mr. Ruppert told one of the Port Authority policemen, Officer Bewley, "to do his duty" (R-I, 61), and immediately thereafter Bewley led his fellow officers in arresting the defendants.

(b) The arrests: conflict in testimony concerning whether or not defendants were offered a chance to leave and avoid arrest.

The testimony of all four defense witnesses was in sharp conflict with that of Officer Bewley as to whether or not the defendants were effectively warned that they were about to be arrested and given an opportunity to leave and avoid arrest.

The testimony of Officer Bewley (supported by that of his fellow arresting officers)[2] was that both Mann, the picket captain, and Officer Bewley had warned the defendants that they would be arrested if they did not leave. He stated that immediately prior to the arrests, he gave the defendants an opportunity to leave and avoid arrest. (R-I, 154-157, 170-171)

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[1] There is a conflict in the testimony as to whether or not Mr. Rupert's ultimatum was effectively conveyed to the members of the picket line before they were arrested. See infra. (b).

[2] The prosecution witnesses were allowed, over the objections of defense counsel, to remain in the courtroom during previous testimony. (R-I, 14-15)

All five defense witnesses (Miss Miller, Miss Boyer, Miss Phyfe, Mr. Zalon and Mr. Mann) indicated that a few minutes before the arrests Mann had addressed the picketers and instructed certain younger picketers to get off the line, but he did not state that arrests were definitely going to take place, nor did he state that adults who wished to avoid arrest should leave the line. None of the five witnesses, including Miss Phyfe, who testified that she was arrested by him, heard Officer Bewley make any announcement before the arrests offering the defendants an opportunity to leave. (R-II, Miss Miller: 184-190, Miss Boyer: 239-243, Miss Phyfe: 263-266, Mr. Zalon: 288, Mr. Mann: 161-166.)

The only significance of this conflicting testimony lies in the fact that the implication of Bewley's testimony (that each of these defendants knew of the Port Authority ultimatum and at the last minute consciously chose to be arrested rather than leave the terminal) stands sharply contradicted. In fact there appears to have been a lack of communication between the picket captain and the pickets with the result that arrest came as a surprise to some or all of the pickets. Miss Boyer and Miss Phyfe so stated. Clearly a number of the defendants had good reason to avoid being arrested and forced to stand trial in New York City. Miss Leslie Boyer lived in Syracuse, New York;

Miss Phyfe lived in Boston; Morton Alexander was scheduled to leave soon for college in the State of Washington; Walter Brooks lived in New Haven; Miss Miller lived in Kingston, N. Y. Surely some of them would have chosen to leave if a last-minute chance to do so had really been offered by Officer Bewley or the picket captain. These defendants did not knowingly submit to arrest rather than leave. They were awaiting further information and instructions from the picket captain when the police moved in and arrested them.

7. Circumstances at the time of arrest; no violence or abusive language; east-west pedestrian traffic moving at all times. No police effort to disperse the crowd instead of arresting defendants.

Although the defendants called out responsive chants and sang songs in what some of the prosecution witnesses called "a loud voice," there was no testimony of any complaints to indicate that by their chanting and singing they had annoyed, disturbed or been offensive to anyone. ~~Except for the singing,~~ There was much testimony that the defendants did absolutely nothing but walk the prescribed picket line while singing and chanting. (R-I, 21, 39) They did not use any offensive or abusive language or incite violence in any way (R-I, 210-211, 198; R-II, 120) Similarly, they did not interfere with or obstruct access to the Trailways ticket counter. (R-I, 28, 65, 166) They did not "sit in" or offer any resistance to arrest, passive or otherwise. (R-I, 198-199)

Pedestrian traffic through the east-west arcade was not blocked, either by the pickets or by the crowd. There was testimony from many of the witnesses for both prosecution and defense to the effect that the picket line caused a crowd of onlookers numbering between 150 and 400 persons to collect in the open space in the vicinity of the ticket counter on either side of the "L."[1] Although the prosecution witnesses testified that the collected crowd (whatever its size) caused some minor inconvenience or "obstruction" to the passage of east-west pedestrian traffic along the main arcade, none of those witnesses indicated that a person desiring to make his way from Eighth to Ninth Avenue had to do anything more than weave his way through a loose and shifting crowd of onlookers. (R-I, 97, 101) Police witnesses indicated that movement of pedestrians along the east-west arcade was possible during the picketing. (R-I, 179; R-II, 28, 88) Defense witnesses indicated that east-west pedestrian traffic was moving and was kept moving by the police, at least during the early part of the picketing. (R-II, 181, 183, 223, 258-59, 301-302) The moving picture films put into evidence by the People show the east-west crowd moving briskly.

Although Officer Bewley gave the existence of a crowd as one of his reasons for making the arrests (R-I, 156, 171) neither he nor any of the other prosecution witnesses gave any indication that any attempt was made to disperse the crowd instead of arresting the defendants. (R-II, 91-92) It appears that a crowd was allowed to collect and then used as an excuse for arrests regardless of the fact that it was a peaceful crowd which could easily have been dispersed by the policemen on hand if they had desired or been instructed to do so.

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[1] Ruppert: R-I, 50; Bewley: R-I, 180-181; Ruane: R-II, 26-27; Mann: R-II, 130; Phyfe: R-II, 258.

POINT ONE

DEFENDANTS WERE NOT PROVED GUILTY OF VIOLATING SECTION 722 BEYOND A REASONABLE DOUBT.

1. The People did not prove that "breach of the peace" was intended by the defendants or likely to result from their actions.

The necessary elements of disorderly conduct under Section 722 are well established. In order to prove a violation of Section 722, the prosecution must prove the following beyond a reasonable doubt: (1) that the defendant in fact committed an act described in one of the numbered subdivisions and (2) that such act was either (a) committed with intent to commit a breach of the peace or (b) committed under circumstances likely to result in a breach of the peace. In People v. Donegan, 19 Misc.2d 547, 543, 191 N.Y.S. 2d 701, 703 (Ct. of Sp. Sess., City of N.Y., App.Pt., 1st Dept., 1959, Gassman, P.J.), the court stated the requirements for conviction quite clearly:

> "To constitute disorderly conduct, there must be proof not only (1) that the defendant committed the acts charged, but also (2) they were committed with intent to provoke a breach of the peace or under circumstances likely to cause a breach of the peace."

The court also stated that "the act of picketing alone did not warrant the defendant's conviction of disorderly conduct, unless other acts on her part tended to, or were likely to, provoke a breach of the peace." Accord: People

v. Ferrara, 17 N.Y.S.2d 696, 697 (City Ct., New Rochelle, 1940, Fasso, J.); People v. Rabey, 48 N.Y.S.2d 937, 939, (County Ct., Broome Co., 1944, McAvoy, J.); People v. Vest, 11 A.D.2d 1080, 206 N.Y.S.2d 471 (4th Dept. 1960); People v. Szepansky, 25 Misc.2d 239, 240, 203 N.Y.S.2d 306 (County Ct., Steuben Co., 1960, Gabrielli, J.).

"Breach of the peace" has been defined in the law of New York for over 50 years. It includes only extremely aggravated disturbances. The creation of mere annoyance or inconvenience to the public is not enough, particularly where picketing or similar "free speech" efforts are involved. "More than a mere inconvenience of pedestrians is required. . . ." People v. Carcel, 3 N.Y.2d 327 (1957). See Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 501-502 (1949); Cox v. Louisiana, 379 U.S. 559, 564 (1965); Schneider v. State, 308 U.S. 147, 162 (1939).

The authoritative definition, repeatedly restated by the Court of Appeals, was set forth in People v. Most, 171 N.Y. 423, 429 (1902):

> "A breach of the peace is an offense well known to the common law. It is a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community." (Emphasis supplied.)

Accord: People v. Harvey, 307 N.Y. 588 (1954).

In People v. Nixon, 248 N.Y. 182 (1928), the Court of Appeals, speaking through Judge Lehman, reversed the conviction under Section 722 of certain orderly but noisy labor picketers who had marched four abreast on a busy 20 foot sidewalk in the garment district. The court stated that "no circumstances have been shown which would give the color of disorder and violence to conduct which is otherwise colorless." (Emphasis supplied.) The court underscored the fact that in the absence of actual violence, a 722 conviction cannot stand unless it is proved "that the conduct of the defendants was intended as a threat, or could be so construed, or was an incentive to violence by others." (248 N.Y. at 187-188)

In this case there was not one bit of testimony even remotely suggesting that there was any violence, threat of violence, attempt to provoke violence, obscene or abusive language, riot, public panic, or similar serious disorder. There are no facts whatever in the record which come even close to satisfying the legal definition of "breach of the peace." There was not even a hint of uncontrolled or uncontrollable behavior on the part of any of the defendants or anyone in the crowd. At least six policemen were in the immediate vicinity and more than 30 more were on duty in the terminal. The reasoning of the court in People v. Collins, 44 Misc.2d 430, 254 N.Y.S.2d 182 (App. T., 2d Dept. 1964), aff'd 16 N.Y.2d 554 (1965), is completely applicable here. In Collins, the court held

> "under the circumstances here present, the likelihood of a breach of the peace was negatived by the presence of police officers in sufficient number to control the situation." (254 N.Y.S.2d at 184).

The chanting and singing of the pickets were clearly not seriously disturbing and were not so regarded by the terminal officials. Mr Rupert did not want the chanting stopped; he wanted the picket line removed, and would not accept less. (R-I, 53; R-II, 286) He did not object to the chanting, nor did he indicate that a silent picket line would be tolerated. The prosecution witnesses were not able to recall any significant complaints about the vocal efforts of the picketers. In uncontroverted testimony, the defendants Marjorie Phyfe and the picket leader Eric Mann stated that the singing did not interfere with conversations held in a normal tone of voice a few feet away from the picket line. (R-II, 256-257, 174-175) A certain amount of shouting by picketers, in connection with perfectly orderly picketing, is insufficient to create a breach of the peace. People v. Nixon, 248 N.Y. 182 (1928). Furthermore, the trial court did not make a specific finding on the breach of the peace element. Its only reference to breach of the peace, at the beginning of the oral opinion (R-II, 314), presented a seriously erroneous statement of the law:

> "Section 722 . . . states that any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts are [sic] deemed to have committed the offense of disorderly conduct. The acts spell out the intent, where the acts are of such a nature that they should have known that what they were doing may have provoked a breach of the peace." (Emphasis supplied.)

Thus the record indicates the court's adherence to a sweeping, all-inclusive view of section 722 which would render it unconstitutional under the holding of Cox v. Louisiana, 379 U.S. 536, 551-52 (1965). In Judge Schreckinger's view, the People may establish intent to provoke a breach of the peace via proof of a remote contingency, *i.e.*, that the defendants "should have known that what they were doing may have provoked a breach of the peace." Under this erroneous view it would be possible, as was done in this case, to convict the members of an orderly picket line under Section 722(4) for causing a crowd to collect, on the theory that although no serious disturbance took place and none was threatened or likely to take place, the defendants knew when they began to picket that their actions might conceivably provoke a breach of the peace.[1]

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[1] Even under that test conviction would be improper in this case, since breach of the peace was hardly even conceivable, given 35 policemen in the terminal.

Under the court's interpretation, a completely orderly, controlled and unabusive picket line is illegal if it causes a crowd to collect and the participants know, as they always do, that their actions "may provoke" violence, even though there is nothing provocative or challenging about them. It is precisely this kind of broad interpretation--bringing criminal penalties down upon orderly free speech activities simply because they annoy or create minor inconvenience--that the Supreme Court has declared unconstitutional in Cox v. Louisiana, 379 U.S. 536, 544-552 (1965) (sidewalk completely blocked); Edwards v. South Carolina, 372 U.S. 229 (1963); Terminiello v. Chicago, 337 U.S. 1, 4-5 (1949).

It is elementary that if any element of the offense--including the breach of the peace element--was not proven beyond a reasonable doubt the defendants should have been acquitted. People v. Donegan, supra; People v. Matthews, 155 N.Y.S.2d 873, 875 (Tioga Co. Ct., 1956). Since there is insufficient legal evidence to sustain these convictions, this intermediate appellate court should "reverse in the interests of justice" and "because the trial court judgment was against the weight of the evidence." People v. Kelly, 12 N.Y.2d 248, 250 (1963).

2. The presence of police in sufficient number to control the situation, demonstrates conclusively that breach of the peace was not likely in the circumstances.

In a picket demonstration situation where the picketers are well controlled and orderly, the presence of a police force sufficient in number to handle the attendant crowd and to maintain order is a crucial factor in determining whether or not breach of the peace is likely. Cox v. Louisiana, 379 U.S. 536, 550-551 (1965); Edwards v. South Carolina, 372 U.S. 229 (1963); People v. Collins, 44 Misc.2d 430, 254 N.Y.S.2d 182, 184 (App. T., 2d Dept., 1964), aff'd, 16 N.Y.2d 554 (1965). In the present case there was no evidence whatever to indicate that the 35-man police force on duty in the terminal was not in control of the situation at all times and able to handle any foreseeable problems. Indeed, the record shows beyond question that the picket line and crowd were orderly, that no disorder was anticipated, and that the police were in control.

In Cox v. Louisiana, supra, a crowd of 2,000 singing, chanting demonstrators gathered across the street from a courthouse to protest certain arrests. The Supreme Court found that the demonstrators were orderly and well-disciplined. Although a grumbling and menacing group of onlookers was present, a large contingent of policemen was on hand which "could have handled the crowd." The Court held that since the circumstances were under control, arrest of the demonstration leader was a violation of First Amendment rights.

In Edwards v. South Carolina, 372 U.S. 229 (1963), a group of demonstrators engaged in a free speech protest march on the State House grounds were ordered by the police authorities to disperse. Instead of dispersing, they began singing patriotic songs and one of their number gave a religious speech. They were arrested for failing to disperse and convicted of disorderly conduct. The Supreme Court reversed the convictions, holding that the First Amendment will not permit the conviction of singing, placard carrying demonstrators where "There was no evidence or threat of violence on their part or on the part of any member of the crowd watching them. Police protection was 'ample'." (Id. at 236.)

In People v. Collins, 44 Misc.2d 430, 254 N.Y.S. 2d 182, 184 (Sup. Ct., App. T., 2d Dept., 1964), aff'd, ly N.Y.2d 554 (1965), the court, in reversing the conviction under Section 722 of certain picketers arrested at the New York World's Fair, stated:

> ". . . under the circumstances here present, the likelihood of a breach of the peace was negatived by the presence of police officers in sufficient number to control the situation. (Edwards v. South Carolina, 372 U.S. 229, 233 . . .; People on Inf. of Placzunas v. De Stefanis, City Ct., 34 N.Y.S.2d 52)."

Where adequate police protection is present to prevent violence or the threat of violence, orderly demonstrators may not be arrested merely because they have caused a crowd to collect. The First Amendment requires that even a certain amount of noise must be tolerated. Cf. N.Y. Times v. Sullivan, 376 U.S. 254 (1964). Such activities are protected against punishment "unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminiello v. Chicago, 337 U.S. 1, 4-5 (1949); Edwards v. South Carolina, 372 U.S. 279, 237-239 (1963); People v. Carcel, 3 N.Y.2d 331, 332 (1957). In the present case the most that has been shown is a minimal amount of public inconvenience and annoyance (R-I, 97).

It is therefore a violation of constitutional rights for the police to arrest the picketers without first making a reasonable effort to control the crowd and keep it moving. Indeed, it is probable that any inconvenience or "obstruction" to pedestrian traffic caused by the standing crowd was in reality attributable not to the defendants, but to the terminal police who failed to keep the crowd moving although they were quite capable of doing so.

Therefore, it was clearly erroneous for the trial court, in disregard of all of these binding decisions, to prevent counsel from cross-examining various prosecution witnesses, as to the sufficiency of the Port Authority police force to handle the situation and the availability of reinforcements. (R-I, 90-93, 184-185, 192-199). Clearly erroneous also was the belief of the court that the number of policemen present is irrelevant to a charge under Section 722. When the court refused to permit Officer Bewley to indicate whether or not there were sufficient police to control the situation, the court said, "I am not concerned whether there was 50 or one policemen to handle the situation." (R-I, 192- 92). However, regardless of the court's erroneous view of the law, the record shows that approximately 35 policemen were on duty in the terminal at the time of the arrests. (R-I, 87).

POINT TWO

THE FIFTY-FOOT WIDE MAIN PEDESTRIAN THOROUGHFARE OF THE PORT AUTHORITY BUS TERMINAL IS A PUBLIC OR QUASI-PUBLIC PLACE WHERE FREEDOM OF SPEECH MAY BE EXERCISED. IT WAS ERROR FOR THE TRIAL COURT TO CONCLUDE THAT FIRST AMENDMENT RIGHTS DO NOT APPLY WITHIN THE TERMINAL.

In its oral opinion, the trial court stated that "the Constitution did not intend that thes[e] rights of picketing . . . be extended . . . to . . . [an] enclosure such as the Port Authority building." (R-II, 315) The court's conclusion that no free speech rights may be claimed within the terminal undoubtedly stems from its erroneous belief that the Port Authority terminal is private property.[1] The facts of the case show that the terminal is freely open to the public, and the controlling cases demonstrate that First Amendment rights may be exercised in the fifty-foot wide main arcade.

In concluding that the terminal is "private property" within which First Amendment rights do not exist, Judge Schreckinger accepted as valid the admitted policy of the Port Authority of refusing to allow picketing, handbilling or any kind of "free speech" activity within the terminal.[1] This was serious error. For the court failed to recognize that when an owner of property undertakes for his own purposes to create a walkway freely open to the general public and commonly used as a means of gaining access to private buildings, shops, or public transportation, he voluntarily surrenders a portion of his right of exclusive dominion to the rights of those who desire to express their views to the passing public.[2] The obligation to recognize First Amendment rights is all the more imperative where the owner of the walkway is an agency of government created to serve the public. The lobby of the Port Authority terminal is clearly a public or quasi-public place, as that category is defined in the controlling cases.

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[1] "As to the reason for picketing . . . has . . . nothing at all to do with this particular charge, since it took place on private property." R-I, 98-99. "If you want to know, I will tell you now, that the Port Authority is for the use of the public, but is private property. If you want to know something, that's what it really is." R-I, 99.

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[1] At page 18 of their trial brief, the People stated:

> "Defendants were advised that it is the consistent policy of the Port Authority to refuse permission for the display of signs and the distribution of leaflets inside the terminal. . . ."

[2] Marsh v. Alabama, 326 U.S. 501 (1946) (streets and sidewalks of a company town); Watchtower Bible and Tract Society v. Metropolitan Life Insurance Company, 297 N.Y. 339 (1948) (streets and sidewalks of a privately owned housing development); Dorsey v. Stuyvesant Town Corporation, 299 N.Y. 512 (1949); Danbois v. New York Central Railroad, 12 N.Y.2d 234 (1963); Cox v. Louisiana, 379 U.S. 536 (1965) (public sidewalk completely blocked by 2,000 students); Edwards v. South Carolina, 372 U.S. 229 (1963) (state house grounds); Schwartz-Torrance Investment Corp. v. Bakery & Confectionery Workers Local 31, 61 Cal.2d 766,

In the leading case of Marsh v. Alabama, supra, the Supreme Court held that privately owned walkways become subject to First Amendment rights when they are open "for use by the public in general" (326 U.S. at 506) and "accessible to and freely used by the public in general" (Id. at 503). The Court stated:

> "The more an owner, for his own advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." (Id. at 506)

In Watchtower, supra, the Court held that speech activities are protected "on streets, sidewalks, or other public or quasi-public places" owned by private corporations.

The courts of New York in two different cases under Section 722 have expressly held that the First Amendment protects reasonably conducted picketing in large public terminal facilities. People v. Barisi, 193 Misc. 934,

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(footnote continued)

394 P.2d 921 (1964), cert. denied, 380 U.S. 906 (1965) (privately owned shopping center parking lot); Amalgamated Clothing Workers of America v. Wonderland Shopping Center, 370 Mich. 547, 122 N.W.2d 785 (1963) (walkways of a privately owned shopping center); People v. Remson, 188 Misc. 21, 63 N.Y.S.2d 860 (Mag. Ct., City of N.Y., Queens Co., 1946, Soffer, M.) (lobby of municipal air terminal in New York City); People v. Barisi, 193 Misc. 934, 86 N.Y.S.2d 277 (Mag. Ct., City of N.Y., Manhattan, Andrews, M.) (lobby of Pennsylvania Railroad Terminal in New York City); People v. Ribinovich, 13 N.Y.S.2d 135 (Sp.Sess.App.Pt.,2d Dept., 1939) Coney Island boardwalk); People v. DeJulis, 21 N.Y.S.2d 995 (City Ct. of New Rochelle, 1940) (walkways in Glen Island Park).

86 N.Y.S.2d 277 (Mag. Ct., City of N.Y., Manhattan, 1948, Andrews, M.); People v. Remson, 188 Misc. 21, 63 N.Y.S.2d 860 (Mag. Ct., City of N.Y., Queens Co., 1946, Soffer, M.). In Barisi picketers in Pennsylvania Station had refused to leave when told by the police to do so. The court found that the acts of the defendants were not reasonably calculated to "provoke or incite others to breach of the peace" and that the arrests were in violation of the First Amendment rights of the defendants. The court stated:

> ". . . by opening up their place to the general public, the owners of the station have made it a quasi-public place, and as such their ownership is 'circumscribed by the constitutional rights of those who use it.'"

Magistrate Andrews concluded that since picketing is a protected activity within the terminal, defendants could not be punished if their actions would have been permitted on a public sidewalk. His words are perfectly applicable to the facts of the present case:

> "The testimony evidenced no acts by the defendants which would have justified their arrest if the picketing had taken place on a public thoroughfare other than a slight interference with persons going to and from trains, but no more than is encountered by the average person in that busy state."

In Remson, supra, picketers ignored a police order forbidding them to picket inside a municipal airport and conducted a picket line which did not involve fraud, violence, threats, or intimidation. The court dismissed the charges under Section 722 on the ground that the police order was "based solely on the ground that defendants desired to exercise their constituional right of free speech, of which picketing is only a form."

In Schwartz-Torrance Investment Corp v. Bakery & Confectionery Workers, Local 31, 61 Cal.2d 766, 394 P.2d 921 (1964), cert. denied, 380 U.S. 906 (1965), the private owner of a shopping center parking lot sought to enjoin as a trespass peaceful union picketing of an employer located in the center. The Supreme Court of California, in a carefully reasoned opinion, held that the interests of the union members in exercising their right to freedom of speech far outweighed the interest of the parking lot owner in maintaining exclusive control over its property. The California Supreme Court stated the basis of its decision in the following language (61 Cal.2d at 771-772):

> "On the other hand, the countervailing interest which plaintiff endeavors to vindicate emanates from the exclusive possession and enjoyment of private property. Because of the public character of the shopping center, however, the impairment of plaintiff's interest must be largely theoretical. Plaintiff has fully opened his property to the public. Approximately 10,000 people visit the premises weekly. The shopping center affords unrestricted access between its parking lot and the public streets. The center constitutes a conglomeration of business enterprises designed to provide essential services to all members of the local community: 'access by the public is the very reason for its existence.' (Lombard v. United States (1963) 373 U.S. 267 [83 S.Ct. 1122, 10 L.Ed. 2d 338] (concurring opinion.))

> ". . . .
>
> "We conclude that the picketing in the present case cannot be adjudged in the terms of absolute property rights; it must be considered as part of the law of labor relations, and a balance cast between the opposing interests of the union and the lessor of the shopping center. The prohibition of the picketing would in substance deprive the union of the opportunity to conduct its picketing at the most effective point of persuasion: the place of the involved business. The interest of the union thus rests upon the solid substance of public policy and constitutional right; the interest of the plaintiff lies in the shadow cast by a property right worn thin by public usage."

Citing, inter alia, Marsh v. Alabama, supra; People v. Barisi, supra; Lombard v. Louisiana, 373 U.S. 267 (1963); In re Zerbe, 60 Cal.2d 666, 670, 388 P.2d 182 (1964) (picketing on railroad right of way), and Amalgamated Clothing Workers of America v. Wonderland Shopping Center, 370 Mich. 547, 122 N.W.2d 785 (1963) (picketing in shopping center parking lot), in support of its decision, the court concluded that by opening its property to the general public without limitation, the property owner had opened it also to peaceful picketing under the First Amendment:

> "Plaintiff suffers no significant harm in the deprivation of absolute power to prohibit peaceful picketing upon property to which it has invited the entire public."

The reasoning of Schwartz-Torrance is directly applicable to the present case. In the present case instead of a privately owned parking lot, we have a publicly owned terminal also completely open to the public. The interests to be balanced are the interests of the Port Authority in performing its designated function of operating a terminal facility and those of CORE and its members in exercising their First Amendment rights. There is no substance to the argument that defendants were properly arrested because they refused to remove their picket line from a position near the company involved to a distant point on the sidewalk outside one of the terminal entrances. Since there are many entrances to the terminal, removal of the picket line to one of them would have seriously undermined its effectiveness. The right to picket includes the right to picket effectively. As the court stated in Schwartz-Torrance, "the union's interest in picketing [is not] diminished because it may communicate its message at other, admittedly less advantageous, locations off plaintiff's premises." Clearly the lobby of the Port Authority bus terminal is large enough and well enough staffed with policemen to accommodate reasonably limited peaceful picketing.

In this case the convictions were based in part upon the trial court's conclusion that First Amendment rights may not be exercised within the terminal; the defendants were conducting their picket line in an orderly, non-obstructive manner; they were arrested despite the offer of their counsel to reduce the number of picketers or otherwise restrict the dimensions of the picket line according to the wishes of the terminal officials (R-II, 286); a large contingent of policemen was available to maintain order and control the crowd. There was no substantial impairment of the functions of the terminal, nor was any such impairment intended. The foregoing factors require reversal of the convictions below.

As Marsh, Barisi, Schwartz-Torrance, and other cases cited above clearly hold, peaceful picketing on "private property" is protected by the First Amendment if the property is freely accessible to the general public and commonly used by large numbers of people. The terminal in this case clearly meets that test. The Port Authority terminal is neither privately owned nor privately operated. Its lobby is completely open to and freely used not only by bus travelers, but also by the general public. It is owned entirely by the public through the Port of New York Authority, a so-called "public corporation" formed and owned entirely by the States of New York and New Jersey. N.Y.Unconsol. Laws, § 6401.

The Port Authority bus terminal is a large building occupying one full city block. Its main lobby, consisting of a passage or concourse 50 feet wide, runs the length of the building from Eighth to Ninth Avenues and is completely open to the public. This lobby provides a walkway between Eighth and Ninth Avenues, access to the Eighth Avenue Subway, and access generally to the various concessions located in the terminal as well as a means of getting to and from public buses. It is in every practical sense a public sidewalk one block long, covered by a roof, and maintained by the Port Authority. This Court may take judicial notice of the fact that thousands of people pass through the terminal each day.

The People may cite State v. Kirk, 84 N.J. Super. 15, 201 A.2d 102 (Essex Co. Ct., 1964), aff'd, 88 N.J. Super. 130, 211 A.2d 201 (Sup. Ct., App.Div., 1965), to support the convictions in this case. In that case union picketers were convicted of trespass for refusing to leave the Newark Airport when ordered to do so by the Port Authority officials. An intermediate court upheld the conviction. In an opinion which fails to discuss any of the pertinent authorities contrary to its decision, the trial court based conviction upon the conclusion that the Newark Airport is "private property." It also viewed the terminal and concluded that the picket line would have been just as effective outside one of the entrances. (There appears to have been one main entrance leading to the struck airline.)

Kirk has never been cited with approval by any court of New York or any other state. On the other hand, People v. Barisi, the leading New York case, was favorably cited by the Court of Appeals in People v. Carcel, 3 N.Y. 2d 327, 332 (1957), and by the Supreme Court of California in Schwartz-Torrance, supra. The facts of Kirk were materially different from those here presented, for there the court specifically found that picketing against the struck airline would have been just as effective outside the terminal entrance as inside the terminal. Here the terminal had many entrances, and no finding was made that picketing at any of them would have adequately served defendant's purposes.[1] That case further differed from this case in that the charge was criminal trespass, which requires no proof of disorderly conduct and no likelihood of "breach of the peace."

It should be noted that although the argument that a terminal is "private property" tends to support a charge of trespass, the same argument tends to remove the underpinnings from a charge under Section 722. Whereas trespass ordinarily takes place on private property, disorderly conduct under Section 722 can occur only in a public place. People v. Trumble, 147 Misc. 727, 264 N.Y. Supp. 576 (Tioga Co. Ct. 1933); People v. Whitman, 178 App.Div. 193, 165 N.Y.Supp. 148 (2d Dept. 1917). Thus by the very act of charging defendants with disorderly conduct, the People admitted that the acts were done in a "public place" and not on "private property." If the terminal is "private property," the convictions were improper.

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[1] Moreover, there is a constitutional right to choose a peaceful picketing situs which will be most effective, subject only to reasonable traffic controls. Martin v. Struthers, 319 U.S. 141, 150 (1943); Schneider v. State, 308 U.S. 147, 163 (1939); Williams v. Wallace, 240 F.Supp. 100 (M.D.Ala. 1965); V.E.R.M.W.A. v. Baldwin, 167 F.Supp. 235, 242 (D.Conn. 1946). "First Amendment Freedoms can no more validly be taken away by degrees than by full swoop." N.L.R.B. v. Fruit & Vegetable Packers, 337 U.S. 58, 80 (1964)(Black, J., concurring opinion).

It is of course obvious that no "trespass" charges were made in this case under Penal Law Section 2036, nor could any such charges have been made, for there was in this case no unauthorized entry by the defendants and no criminal intent, both of which are required by Section 2036. People v. Lawson, 44 Misc.2d 578, 254 N.Y.S.2d 300 (App. T., 1st Dept., 1964), aff'd, 16 N.Y.2d 552 (1965); People v. Collins, 44 Misc.2d 430, 254 N.Y.S.2d 182 (App. T., 2d Dept., 1964), aff'd, 16 N.Y.2d 554 (1965).

The People may attempt to support conviction with the strange argument made in the court below that because picketing is not "pure" speech, it is somehow inherently "disorderly" when conducted inside a large terminal. There is absolutely no reason to think that orderly picketing becomes "disorderly" simply because it is conducted under a roof. While many First Amendment cases do draw a distinction between picketing and such "pure" forms of speech as speechmaking and handbilling (see, e.g., Cox v. Louisiana, 379 U.S. 536, 555-557), that distinction has no relevance to the present case. The Port Authority officials made perfectly clear and admitted in the People's trial memorandum that no form of speech activity is allowed in the terminal. Defendants would not have escaped arrest if they had all been walking about distributing leaflets and giving speeches. Indeed, defendant Marjorie Phyfe testified without contradiction (R-II, 250,255) that she was handing out handbills in the arcade when a policeman told her that she could only distribute her pamphlets at the picket line. She testified that on the picket line she did not sing, but simply handed out handbills as best she could. This entrapment of Miss Phyfe on the picket line shows clearly that the police gave no special consideration to "pure" free speech.

The People may argue that the primary purpose of the Port Authority bus terminal is to provide a facility for the use and convenience of bus carriers and their passengers and that in order to promote that primary purpose the Port Authority may adopt reasonable regulations designed to promote the efficient functioning of the terminal. We agree. But we do not agree that it is reasonable or necessary to forbid all picketing and handbilling in the terminal in the name of efficient operation. If they desire to do so, a force of 35 policemen can surely supervise a well organized picket line or a few handbill distributors so that the "efficiency" of the terminal is not seriously impaired. We submit that under the First Amendment it is beyond the powers of the Port Authority to forbid all free speech activity in the terminal. But even if a blanket prohibition of picketing is within the powers of the Port Authority, that agency does not have the power to change the meaning of Section 722 of the Penal Law so that mere refusal to obey a terminal policy against picketing constitutes a violation. Indeed, we submit that the Port Authority manager abused his authority over the Port Authority policemen when he prevailed upon them to make arrests for disorderly conduct as a method of enforcing Authority regulations and policies:

> "[S]ection 722 of the Penal Law should not be used for the purpose of enforcing other laws or ordinances unrelated to it. Such other laws or ordinances should stand or fall upon their own provisions." People v. Yost, 61 N.Y.S.2d 447, 448 (Utica City Ct., Oneida County, 1946, Walsh, J.).[1]

Since the defendants were picketing in an orderly fashion for a valid purpose in a public place, their arrest and conviction under Section 722 was a violation of First Amendment rights.

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[1] "There is an increasing tendency to employ Section 722 whenever it is determined a person should be arrested. This should not be countenanced by the courts." People v. Swald, 73 N.Y.S.2d 339 (Utica City Ct. 1947). Accord: People v. Goldstein, 268 N.Y.Supp. 59, 51 (Sp.Sess.,App. Pt., 1st Dept., 1933). See People v. Donegan, 191 N.Y.S.2d 701 (Sp.Sess., App.Pt., 1st Dept., 1950).

POINT THREE

SECTION 722 OF THE PENAL LAW IS UNCONSTITUTIONALLY VAGUE UNDER THE FIRST AND FOURTEENTH AMENDMENTS, SINCE NEITHER ON ITS FACE NOR AS CONSTRUED BY THE COURTS DOES IT ADEQUATELY WARN A PERSON OF AVERAGE INTELLIGENCE WHAT FORMS OF PICKETING AND HANDBILL DISTRIBUTION ARE PERMISSIBLE OR WHERE SUCH ACTIVITIES MAY BE CONDUCTED.

A statute is void-for-vagueness under the due process clause of the Fourteenth Amendment if it does not "give fair warning of the conduct that it makes a crime." Bouie v. City of Columbia, 378 U.S. 347, 350-352 (1964). Such a statute must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." Connally v. General Const. Co., 269 U.S. 385, 391 (1926). "[A] statute which . . . forbids the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Ibid.) "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the statute commands or forbids." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

Application of the foregoing principles is particularly important where the statute may be applied to acts involving the expression of ideas or views which have a claim to the protection of the First Amendment. Cox v.

Louisiana, 379 U.S. 536, 551-52, 557-58; Cox v. Louisiana, 379 U.S. 559, 574, 576-80 (opinion of Black, J.). See Elfbrandt v. Russell, 384 U.S. 11 (1966); Baggett v. Bullitt, 377 U.S. 360 (1964); Cramp v. Board of Public Instruction, 368 U.S. 278 (1961); Stromberg v. California, 283 U.S. 359 (1931).

Mr. Justice Goldberg, speaking for the Court in Cox, stated the controlling principle quite succinctly:

> "There is . . . [a] plain requirement for laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulation of conduct that involves freedom of speech and assembly not to be so broad in scope as to stifle First Amendment freedoms, which 'need breathing space to survive,' NAACP v. Button, 371 U.S. 415, 433; for appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct; and for all such laws and regulations to be applied with an equal hand." 379 U.S. at 574.

It is perfectly clear that on its face Section 722 makes no attempt to provide "fair warning" as to when speech-giving, picketing, or handbilling is protected by the First Amendment and when such activity may be penalized. Indeed it would appear that picketing and handbilling is per se illegal if a crowd is caused to collect, for one may collect a crowd only when "lawfully addressing" it, which presumably means giving a speech. No guidance is provided as to what is "lawfully addressing" and what is not. By the same token, there is nothing in the statute which provides "appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct." In effect, the statute confers unlimited discretion upon the police or other officials to define the boundary between free speech and disorderly conduct. Such vagueness and unlimited delegation of regulatory power over free speech were expressly held unconstitutional in Cox v. Louisiana, 379 U.S. 536, a case involving a "disturbing the peace" statute identical in substance to Section 722.

The only portion of Section 722 which might be argued to contain a validating limitation upon its otherwise completely vague language, is the language which requires that an enumerated act have been done "with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned." In Cox (379 U.S. 551-52, 576-80) the Supreme Court held virtually identical language[1] to be unconstitutionally vague in the absence of some "narrow and specific" construction of "breach of the peace" established by the Supreme Court of Louisiana.[1] Substantially the same situation prevails in New York under Section 722.

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[1] The statute, La. Rev. Stat. § 14.03.1 (Cum. Supp. 1962), provided that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby . . . crowds or congregates with others . . . in or upon . . . a public street . . . or any public place or building . . . and who fails to disperse or move on when ordered to do so by any . . . officer . . . shall be guilty of disturbing the peace. . . ."

Attempts have been made by the Court of Appeals to define "breach of the peace" to include only conduct which in the circumstances bears "the color of disorder and violence." See, *e.g.*, *People v. Nixon*, 248 N.Y. 182 (1928). But such cases have not cured the fatal vagueness of Section 722, for they do not clearly define the limits of the statute in "free speech" situations. They do not tell picketers when and where they may picket or when they should stop once they have started. They do not tell policemen when picketers must be protected and when they must be arrested. They say nothing about the significance, if any, of applicable administrative regulations.

There are no New York decisions which have transformed the statute into a "narrow and specific" provision, as the Supreme Court held in *Cox* is required for constitutionality. The lack of any objective limitation upon police discretion in interpreting the statute renders it void.

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[1] Mr. Justice Black was of the opinion that the majority held the statute unconstitutionally vague *on its face*. *Id.* at 576-577.

Consequently, as required by the due process clause, the convictions must be reversed because the statute is void for vagueness.

POINT FOUR

WHEN THE PORT AUTHORITY POLICEMEN ASSISTED IN SETTING UP THE PICKET LINE BY PROVIDING A ROPE BARRICADE AND OTHER HELPFUL DIRECTIONS, THEY GAVE TACIT "PERMISSION" TO THE CONDUCT OF THE PICKET LINE WHICH THE PORT AUTHORITY OFFICIALS COULD NOT REVOKE, UNDER THE HOLDING OF COX v. LOUISIANA, EXCEPT IN EXTREMELY COMPELLING CIRCUMSTANCES, WHICH WERE NOT PRESENT WHEN DEFENDANTS WERE ARRESTED.

Neither the Port Authority Policemen nor any of the Authority officials present objected to or forbade the initial establishment of the picket line in this case. In fact, the policemen assisted in setting up the picket line by providing a rope barricade and other directions to indicate reasonable dimensions of the line. All suggestions or directions by the police as to the methods of conducting the picket line were scrupulously obeyed.

Therefore, there was tacit "permission" to conduct the picket line in this case within the holding of Cox v. Louisiana, 379 U.S. 559, 569-73 (1965). In the Cox case, 2,000 peaceful and orderly demonstrators marched to the courthouse in Baton Rouge, Louisiana. When they arrived at a point across the street from the courthouse, the Reverend B. Elton Cox, leader of the demonstrators and a CORE Field Secretary, explained to the Chief of Police and other City officials the length of time the demonstration would take and what it would consist of. The Police Chief indicated that the demonstrators should confine their activities to the west side of the street, away from the courthouse. The demonstration, which was to consist of prayers, a speech, and the singing of "freedom songs," was then allowed to commence.

Before the demonstration was completed according to the announced plan, the Sheriff proclaimed over a loudspeaker that the demonstration was over and that the demonstration "has to be broken up immediately." Reverend Cox ordered his people not to move. The Supreme Court, in an opinion by Mr. Justice Goldberg, held, inter alia, in reversing affirmance of a conviction by the Supreme Court of Louisiana, (1) that in directing the demonstrators to the situs of their activities and failing to forbid the commencement of such activities, the responsible officials gave "permission" for the announced activities to be conducted and (2) that such permission to conduct an activity within the ambit of freedom of expression, once given, could not be revoked except for some extremely compelling reason peculiar to the circumstances, as, for example, where "a meeting . . . though originally peaceful, becomes violent." The Court found that the order to disperse was made "because officials erroneously concluded that what . . . [Reverend Cox] said threatened a breach of the peace." (*Id*. at 572) In the present case there was no testimony that anyone thought a breach of the peace was likely.

CONCLUSION

The convictions should be reversed and the complaints dismissed.

Dated: New York, N.Y.
October 26, 1966

Respectfully submitted,

MARVIN M. KARPATKIN
660 Madison Avenue
New York, N.Y. 10021

BRADLEY R. BREWER
59 Maiden Lane
New York, N.Y. 10038

Attorneys for Defendants-Appellants

Of Counsel:

CARL RACHLIN
STEPHEN NAGLER

MEMORANDUM

To Steve

From Brad

Drummed up in less than a day. Misses a lot of things I would have liked to have said. Wish the typist had used the correct date instead of taking the one from the brief in chief. Oh well maybe I'll have the page retyped. Sometime.

Calendar No. 598

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT

- x

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

JACK DEWS, ALLEN KIMBRELL, JENNIFER MILLER, :
RONALD RILEY, ALLEN CHERRY, ROBERT AUERBACH,
RICHARD MURPHY, ALFRED JAMES, FRANKLIN ALEXANDER, :
ARNOLD GHINGER, RICHARD BROOKS, JEAN FOREST,
PHILLIPPA POSE, LESLIE BOYER, JOYCE SCHURIK, :
AND MARJORIE PHYFE,
:
Defendants-Appellants.
:

- x

REPLY BRIEF OF DEFENDANTS - APPELLANTS

MARVIN M. KARPATKIN
660 Madison Avenue
New York, New York 10021

BRADLEY R. BREWER
59 Maiden Lane
New York, New York 10038

Attorneys for Defendants-Appellants

Of counsel:

CARL RACHLIN
STEPHEN NAGLER

(1) Did the actions of the defendants constitute a "breach of the peace"? If not, was a breach of the peace likely in the circumstances?

In support of the proposition that the evidence was sufficient to prove the "breach of the peace" element of Penal Law Section 722 beyond a reasonable doubt and in an attempt to refute the holding of People v. Collins, 44 Misc.2d 430, 254 N.Y.S.2d 182, 184 (App. T.2d Dept., 1964), aff'd, 16 N.Y.2d 554 (1965), that as a matter of law "the likelihood of a breach of the peace . . . [is] negatived by the presence of police officers in sufficient number to control the situation," the People cite People v. Evans, 7 N.Y.2d 1030 (1960), reversing 192 N.Y.S.2d 144 (App. Pt., 2d Dept., 1959); People v. Liebenthal, 5 N.Y.2d 876 (1959); People v. Friedman, 6 Misc.2d 271 (Mag. Ct., Kings Co., 1939); and People v. Ward, 159 Misc. 328, (App. Pt., 2d Dept. 1963), aff'd, 272 N.Y. 615 (1936).

Evans and Liebenthal both involved convictions under Section 722, subd. 8 "Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature." Subdivision 8 involves unnatural acts and presents special problems with respect to "breach of the peace" which have nothing whatever to do with this case, which concerns picketing.

In People v. Ward, supra, the defendants were arrested and convicted under Section 722(2). They had joined a picket line which had attracted 700-800 people. The police, desiring to reduce the size of the picket line and thereby to reduce the size of the crowd, asked defendants to leave and arrested them when they refused to do so. Affirmance was simply on the ground that the police order had been reasonable. The police did not attempt to eliminate the picket line completely, but simply attempted to reduce its size. In the present case, counsel for the pickets offered voluntarily to reduce the size of the picket line to any dimensions the terminal officials might deem reasonable only to be told that it didn't make any difference how many pickets there were because any who remained would be arrested. (R-II, 286, uncontradicted testimony).

To the extent that the Court in Ward did not regard the police as having a duty under the First Amendment to assist protect the picketers and to attempt to disperse the crowd before ordering the defendants away, the decision conflicts with controlling precedents and cannot be regarded as indicating the present state of the law. See People v. Collins, 182 Misc.2d 182, 184; supra, Edwards v. South Carolina, 372 U.S. 229 (1963); and Cox v. Louisiana, 379 U.S. 536, 550-551 (1965), where, in each case, the court assumed that policemen present had a duty to take reasonable measures to protect and assist persons attempting to exercise First Amendment rights. It seems perfectly obvious that pickets claiming protection of the First Amendment have a greater interest in remaining at the situs of their activity than mere bystanders who make no such claim.

In People v. Friedman, supra, the court affirmed a conviction under 722(2) and (3) where the defendant, an orator, had attracted a crowd of 200 to 300 people on a sidewalk near a busy highway and had refused to obey a police order to move his activity to a place where the crowd would not be in danger of flowing out onto the highway and being hit by passing cars. People v. Friedman, 130 Misc. 525 (Sp. Sess., App. Pt., 1st Dept, 1927), aff'd, 248 N.Y. 530 (1928), involved creation of a similar physical danger to the attendant crowd.

In Friedman, 6 Misc.2d 271, the court did take an extremely broad view of Section 722 citing People v. Galpern, 259 N.Y. 279, 283 (which did not involve the First Amendment) for the proposition that "a group of persons congregating on a public street may be dispersed, although their intent is orderly and inoffensive. Even there it may be said that 'a breach of the peace may be occasioned.'" 6 Misc.2d at 274. The validity of that proposition in non-First Amendment cases is highly questionable. See Shuttlesworth v. Birmingham, 382 U.S. 87, 90-91 (1965); Brown v. Louisiana, 383 U.S. 131, 138 (1966). In a free speech context, the statement obviously exceeds constitutional limitations. See Collins, Cox, and Edwards, supra.

In Cantwell v. Connecticut, 310 U.S. 296, 308 (1939), the Supreme Court stated its understanding of the limits of "breach of the peace" as applied in First

Amendment cases: "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others." [Emphasis supplied.] In People v. Nixon, 248 N.Y. 182 (1928), the Court of Appeals adopted a similar view under Section 722 when it held that in order for peaceful pickets to be convicted thereunder, the court must find in their actions "the color of disorder and violence." See also, Cox v. Louisiana, 379 U.S. 536, 544-552 (1965); Cox v. Louisiana, 379 U.S. 559, 569-73 (1965); Edwards v. South Carolina, 372 U.S. 229, 236 (1963).

The People's brief makes no attempt to defend the broad and patently unconstitutional construction given Section 722 by the court below under which the mere possibility that a breach of the peace "may" occur is sufficient to justify the arrest of peaceful pickets who refuse to disperse when ordered to do so.

Was there a "breach of the peace" in this case? Clearly not. The trial judge did not find as a fact that a breach of the peace had taken place or that a breach of the peace was likely. Indeed, he appears to have based his decision upon the speculative conclusion that defendants "should have known that what they were doing may have provoked a breach of the peace." (R-II, 314). It has been repeatedly held that in order to justify the arrest of pickets and other demonstrators on "breach of the peace" grounds, there must be an actual threat of violence or similar serious disorder, not a mere speculation. The arrests in Cox, 359 U.S. 559, 572, were invalid because the police erroneously concluded that an actual threat of violence existed. See Mississippi v. Thomas, 380 U.S. 524 (1965); Callender v. Florida, 380 U.S. 519 (1965), and Taylor v. Louisiana, 370 U.S. 154 (1962), where the Supreme Court reversed breach of the peace convictions upon the ground that such convictions cannot be based upon mere speculation by the arresting officers that a breach of the peace may take place; they must be based upon a real and imminent likelihood of such an occurrence.

2. Is People v. Barisi a valid statement of constitutional law as interpreted by the Courts of New York?

The People do not dispute defendants' contention that People v. Barisi, 193 Misc. 934, 86 N.Y.S.2d 277 (Mag. Ct., City of N.Y., Manhattan, 1948), holds that peaceful and orderly pickets inside a terminal are protected by the First Amendment and may not be arrested under Section 722 for acts which would have been permitted on a public sidewalk. Nor do they contend that the picket line in this case would have given rise to valid arrests if it had been conducted outside the terminal on the 15 foot sidewalk instead of inside the terminal on the 50 foot concourse. In fact, the defendants did picket outside the terminal on subsequent Saturdays and were not arrested.

The People maintain that the authority of Barisi is somehow undermined by People v. Bell, 306 N.Y. 110, 114 (1953), and Watchtower Bible and Tract Society v. Metropolitan Life Ins. Co., 297 N.Y. 339 (1948), cert. denied, 335 U.S. 986 (1948). Bell involved arrests for loitering of persons who stood around in a Long Island railroad station and were unable to give a satisfactory reason for their presence. The case did not involve picketing or any other First Amendment activity. If they had been distributing leaflets or attempting in some other reasonable manner to communicate with the passing public arrests for loitering would have been highly questionable.

In Watchtower the court simply held that the hallways of a privately-owned and operated apartment building are not a quasi-public place for First Amendment purposes because the general public is not allowed therein. It is not difficult to perceive a factual distinction between the hallways of an apartment building and the main concourse of a terminal building which houses over 35 business establishments or concessions, including a combination bowling alley, restaurant and bar, a large drug store and luncheonette, a hardware store, four clothing stores, a health food store, two bakery shops, a barber shop, and the offices of a dentist, a podiatrist, and an optician, all of which invite the patronage of the general public.*

In this connection, it is noteworthy that the roof of the terminal contains a large public parking lot. Below that there are five "levels" of terminal facilities open to the public: an upper bus level, a suburban bus level, a suburban concourse, a main concourse, and a lower bus level. According to figures recently published in the New York Times, 205,000 persons passed through the terminal on an average day in 1966.

Thus the terminal clearly functions as a completely open public facility which not only provides bus services, but also serves as a shopping center, as a parking lot, and as a place of sport and amusement. Even more than the lobby of Pennsylvania Station in Barisi, the main concourse of the Port Authority terminal serves as a major pedestrian throughfare through which large numbers of people pass to get to and from buses, to and from the subway, to and from the numerous concessions, and to and from the parking lot.

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*People v. Bohnke, 287 N.Y. 154 (1941), was overruled more than 20 years ago by Martin v. Struthers, 319 U.S. 624 (1943), which held ringing of private doorbells by religious solicitors to be protected by the First Amendment. Breard v. Alexandria, 341 U.S. 622 (1951), held only that commercial solicitation is not a First Amendment activity.

Farmer v. Moses, 232 F.Supp. 154 (S.D.N.Y., 1964, Tyler, J.) is not inconsistent with the holding of Barisi that the terminal is a quasi-public place. In Farmer Judge Tyler held that even though it was operated for profit by a private corporation, enclosed by a fence, and open only to persons purchasing an admission ticket, the New York World's Fair was nevertheless a quasi-public place within which free speech could be exercised. He allowed the distribution of leaflets on the walkways of the Fair, but held that because of the special circumstances of the case picketing would not be allowed. He indicated, however, that if the walkways had been freely open to the public without an admission charge, the result with respect to picketing might well have been different.

As Magistrate Andrews acknowledged in Barisi, it would conflict with fundamental concepts of fairness and with basic First Amendment principles to permit an organization tocreate a vast terminal facility containing walkways wider than city sidewalks and housing numerous business establishments of a kind ordinarily to be found on a public street and then to allow that organization to insulate those establishments from effective criticism in the form of orderly picketing or handbilling. Since defendants were arrested despite their offer to restrict the picket line, it is obvious and in any event conceded that they were arrested because of a terminal policy of arresting anyone who pickets or distributes leaflets inside without permission. It is also obvious that since there are 6 street entrances and a major subway entrance to the terminal, picketing outside one of the entrances would not have provided effective communication with people entering from the subway or one of the other entrances and patronizing the Trailways concession.

Barisi has been regarded by the courts of other states as fundamental authority for the proposition that the owner of a public shopping center cannot insulate the businesses therein from criticism in the form of peaceful picketing. See Schwartz-Torrance Investment Corp. v. Bakery & Confectionery Workers Local 31, 61 Cal.2d 766, 394 P.2d 921 (1964); Amalgamated Clothing Workers of America v. Wonderland Shopping Center, 370 Mich. 547, 122 N.W.2d 785 (1963); State v. Williams, 44 LRRM 2357 (BNA) (1959). See also Nahas v. Retail Clerks Local 905, 144 Cal. App.2d 808, 301 P.2d 902 (1956).

On the facts of this case, this court is faced inescapably with the question of having to accept or reject the rationale of Barisi. If that rationale is rejected and the broad construction of Section 722 adopted by the court below is accepted, New York will be taken out of the mainstream of law in America with respect to First Amendment rights in quasi-public places in which it has been a recognized leader since *Barisi* was decided in 1948.

3. *Has Section 722 of the Penal Law been given a "narrow and specific" interpretation in First Amendment cases as required by recent holdings of the United States Supreme Court?*

In response to defendants' contention that state criminal statutes based upon the broad concept "breach of the peace" are unconstitutional on their face unless saved from the defect of patent vagueness by "narrow and specific" state court rulings placing "appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct" *Cox v. Louisiana*, 379 U.S. 559, 574, the People have cited *People v. Galpern*, 259 N.Y. 279 (1932); *Feiner v. New York*, 340 U.S. 315 (1951); and *People v. Penn*, 16 N.Y.2d 391 (1965), as providing such "narrowing" construction. And they have further argued that the statute is as specific as that involved in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

Chaplinsky is easily distinguished. The statute in that case was directed specifically and exclusively at the use of language designed to evoke a violent response. It provided that

> "No person shall address any offensive, derisive or annoying word to any other person in any . . . public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence

> and hearing with entent to deride, offend or annoy him. . . ." Ch. 378, § 2, Pub. Laws of N. H.

and the Supreme Court of New Hampshire had held that no words were "'forbidden except such as have a direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed.'" 315 U.S. at 573, citing State v. Brown, 68 N.H. 200, 38 Atl. 731. Thus the statute was limited to "fighting words" and did not involve the words "breach of the peace" at all.

People v. Galpern involved an arrest made when one of a group of people gathered on a sidewalk refused to leave when ordered by a policeman to "move on". It did not involve any claim of First Amendment rights. People v. Feiner upheld the arrest and conviction of a sidewalk orator who was threatened with violence by members of the crowd he had caused to collect and who refused to discontinue speaking when ordered by a police officer to do so. Feiner is obviously inconsistent with recent Supreme Court decisions such as Edwards, Cox and others cited in Section 1 above.

Far from providing a "narrow and specific" construction objectively limiting application of Section 722 in First Amendment cases, Galpern and Feiner authorize exercise of the broadest discretion imaginable by police officers. Indeed, as the People indicate at page 23 of their brief, these cases and People v. Penn provide only the concept of "reasonable discretion" as a limitation upon police regulation of freedom of speech under Section 722. This is even more objectionable than the bare phrase "intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned" which creates the major defect of vagueness in the statute and which, as the People seem to concede, has never been given a narrow construction by the courts of New York. That phrase was given the broadest possible construction by the trial court in this case. It is invalid on its face and as applied to defendants. See Ashton v. Kentucky, 384 U.S. 195, 201-202 (1966):

> "Vague laws in any area suffer a constitutional infirmity. When First Amendment rights are involved, we look even more closely lest, under the guise of regulating conduct that is reachable by the police power, freedom of speech or the press suffer. We said in Cantwell v. Connecticut, supra, that such a law must be 'narrowly drawn to prevent the supposed evil,' a conviction for an utterance 'based on a common law concept of the most general and undefined nature,'. . . could not stand."

In Cantwell, Edwards, and Cox and in innumerable other cases before the Supreme Court and the courts of this State, learned judges, including those of the highest courts of Connecticut, South Carolina, and Louisiana, have been unable to agree on a limited construction of "breach of the peace" that is comprehensible to the average policeman and the average citizen and which would satisfy the Supreme Court. In order to interpret the phrase "whereby a breach of the peace may be occasioned" a police officer must not only know what a "breach of the peace" is where free speech is concerned (cf. Cox and Edwards) but also what is meant by circumstances in which such an occurrence "may be occasioned." And he must interpret these phrases with no more statutory guidance than the words "causes a crowd to collect", "obstructs", "annoys", etc.

If the courts cannot agree on the meaning of this statute, it is a bit preposterous to assume that the average policeman and the average citizen can read it and get a concrete conception of its limits.

Conclusion

The convictions should be reversed and the complaints dismissed.

Respectifully submitted,

Dated: New York, N. Y.
October 26, 1966

MARVIN M. KARPATKIN
660 Madison Avenue
New York, N. Y. 10021

BRADLEY R. BREWER
59 Maiden Lane
New York, N. Y. 10038

Of Counsel:

CARL RACHLIN
STEPHEN NAGLER

[N.D.]

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK
---x

PEOPLE OF THE STATE OF NEW YORK,

-v-

[redacted]

---x

DEFENDANTS' TRIAL MEMORANDUM

John Mage, Esq.
Judson Memorial Church
Washington Square South,
New York, New York

William H. Schaap, Esq.
103 Park Avenue,
New York, New York

Attorneys for Defendants.

CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

---------------------------------------x

PEOPLE OF THE STATE OF NEW YORK,

-v-

[redacted]

Defendants.

---------------------------------------x

DEFENDANTS' TRIAL MEMORANDUM

I

SECTION 240.20 OF THE PENAL LAW IS UNCONSTITUTIONAL ON ITS FACE IN THAT IT IS VAGUE AND INDEFINITE WITH NO ASCERTAINABLE STANDARD OF GUILT.

Section 240.20 states that a person is guilty of disorderly conduct if he commits any of seven described acts

> "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof...."

In Winters v. New York, 333 U.S. 507 (1948), the Supreme Court stated (at 509,510):

> "It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within

> the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. Stromberg v. California, 283 U.S. 359, 369, 75 L. Ed. 1117, 1123, 51 S. Ct. 532, 73 ALR 1484; Herndon v. Lowry, 301 U.S. 242, 258, 81 L. Ed. 1066, 1075, 57 S. Ct. 732. A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press."

As the facts demonstrate, defendants were arrested while engaged in activities protected by the First Amendment. Moreover, they had no way of knowing what conduct on their part might inconvenience the public or cause it annoyance or alarm. The disorderly conduct statute forces defendants, at peril of violation of the law, to guess at what point and under what circumstances their protest may become unlawful. A criminal statute purporting to regulate conduct must provide more precise standards.

> "*** The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness.' Cantwell v. Connecticut, 310 U.S. 296, 84 L. Ed 1213, 60 S. Ct. 900, 128 ALR 1352; Pierce v. United States, 314 U.S. 306, 311, 86 L. Ed 226, 230, 62 S. Ct. 237. There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act, Lanzetta v. New Jersey, 306 U.S. 451, 83 L. Ed. 888, 59 S. Ct. 618, or in regard to the applicable tests to

ascertain guilt."

(Winters v. New York, supra, at 515)

Section 240.20 does not meet that standard.

The statute in People v. Firth, 3 N.Y.2d 472 (1957), prohibited operation of an automobile

> "* * * at such a speed as to endanger the life, limbs or property of any person [n]or at a rate of speed greater than will permit such person to bring the vehicle to a stop without injury to another or his property."

The statute was declared unconstitutional, the Court holding that the statute was (at 474):

> "* * * too vague and indefinite to constitute a sufficient definition of criminal conduct and that it contains no sufficient standard by which a driver's conduct may be tested."

Section 240.20 is no more precise in its definition of prohibited conduct than the statute in Firth and is unconstitutional. See also People v. Vetri, 309 N.Y. 401, 405, 406 (1955).

People v. Katz, 21 N.Y.2d 132 (1967), declared unconstitutional Section 692h-1.0 of the New York City Administrative Code which made it unlawful for any person * * * to encumber or obstruct any street * * * with any article or thing whatsoever." Defendant had set up a 3 foot by 3 foot card table with a sign protesting the war in Vietnam. He urged passers-by to write protest letters against the war to government officials.

The Court found that (at 134):

> "* * * the broad prohibitive language of the statute together with the lack of any defined standards for judging violations renders it peculiarly susceptible to arbitrary enforcement. Broad regulatory statutes such as section 692h-1.0 have been held unconstitutional, particularly where they operate to restrain the exercise of First Amendment rights."

Section 240.20 has the same defect. It authorizes a police officer to determine when defendants may have caused public inconvenience, annoyance or alarm, but without giving any guide lines. This unfettered discretion is equivalent to the broad prohibition invalidated in Katz because in neither case have standards been established to guide the police officer in the performance of his duties.

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. United States v. Sharp, Pet. C.C. 118. Before a man can be punished, his case must be plainly and unmistakably within the statute. United States v. Lacher, 134 U.S. 624, 628."
>
> (U.S. v. Brewer, 139 U.S. 278, 288 (1891)

As very recently noted by Justice Basel of this Court in dismissing 41 loitering charges against alleged prostitutes in a "crackdown" by police using mass arrest tactics:

> "Law enforcement officials these days must bear heavy, difficult burdens under trying circumstances. But as long as we desire

our constitutional system to survive, the rights of all individuals when confronted by the power of the state must be paramount even though this makes police work more difficult. If we are to preserve our forms of democracy, the guarantee of the constitutional rights of even common street walkers must be the serious and careful concern of all of us. The right to the protection of the bill of rights cannot be limited to those whom society pronounces to be respectable. The policeman's lot may not be an easy one, but he must discharge it within constitutional limits. 'It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest.' Henry v. United States, 361 U.S. 98, p. 104, 80 S.Ct. 168 p. 172, 4 L. Ed. 134. Once we decree that the end justifies the means as is here attempted, we have irreparably breached the constitutional dike.

* * *

"In the instant case, have we created a crime, loitering, to be 'used as a cloak or cover for arresting and convicting people for some other crime that cannot be proved or for conduct that is not a crime?' Justice Douglas, 70 Yale L. Journal, P. 8-10. If we have, we are faced with a clearly unconstitutional statute.

* * *

"The instant statute is suspect also on the grounds that it violates one of the basic concepts of our constitutional system -- that a penal statute be 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' Connally v. General Construction Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L. Ed. 322; Cantwell v. State of Conn., 310 U.S. 296, 60 S.Ct. 900, 84 L. Ed. 1213; Pierce v. United States, 314 U.S. 306, 311, 62 S.Ct. 237, 86 L.Ed. 226. Here it is the judgment of the officer and not the activity of the defendant which constitutes

> the crime. 'It takes little imagination to perceive that the "reasonable account" . . . requirement of the ordinary vagrancy law operates simply as a charter of dictatorial power to the policeman.' Amsterdam Federal Constitutional Restrictors, 3 CR Law Bulletin 205, 233."
>
> (People v. Williams, 286 N.Y.S. 2d 575, 578 (Cr.Ct. Nov. 9, 1967)

II

SECTION 240.20 OF THE PENAL LAW IS UNCONSTITUTIONAL AS APPLIED HEREIN.

In Edwards v. South Carolina, 372 U.S. 229 (1963) 187 Negroes protesting discrimination against them were arrested after refusing to disperse and were convicted of breach of peace as a common law crime.

The Supreme Court reversed the convictions, stating (at 237, 238):

> "The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views. '[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech ... is ... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public

> inconvenience, annoyance, or unrest * * * There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.' Terminiello v. Chicago, 337 U.S. 1, 4, 5, 93 L.Ed. 1131, 1134, 1135, 69 S.Ct. 894."

Defendants herein were exercising their rights under the First Amendment to assemble, to petition and to speak. Their arrests were no more valid than the arrests in Edwards.

In Cox v. Louisiana, 379 U.S. 536 (1964), over 1500 students marched around the state capitol to demonstrate and protest against the illegal arrest of fellow students. Upon refusal to disperse after hearing speeches and displaying signs, Cox was arrested and charged, among other things, with violating a Louisiana statute which provided

> "Whoever with intent to provoke a breach of the peace, or under circumstances such as a breach of the peace may be occasioned thereby ... crowds or congregates with others ... in or upon ... a public street or public highway, or upon a public sidewalk, ... and who fails or refuses to disperse and move on ... when ordered so to do by any law enforcement officer ... shall be guilty of disturbing the peace." (at 544)

The trial court convicted the defendants stating that (at 550)

> "[i]t must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in

> the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as 'black and white together' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so."

The Supreme Court rejected that rationale and reversed the conviction, following its reasoning in Edwards, supra.

The Supreme Court found another reason to reverse. It held the "congregating" portion of the statute to be "unconstitutionally vague in its overly broad scope." (At 551) It concluded (at 552):

> "Therefore, as in Terminiello and Edwards the conviction under this statute must be reversed as the statute is unconstitutional in that it sweeps within its broad scope activities that are constitutionally protected free speech and assembly. Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. As Chief Justice Hughes stated in Stromberg v. California, 283 U.S. 359, 369, 75 L.Ed. 1117, 1122, 51 S.Ct. 532, 73 ALR 1484; 'A statute which upon its face, and as authoritively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

In Brown v. Louisiana, 383 U.S. 131 (1966), where the Court recognized that a non-verbal sit-down protest was entitled to the protection of the First Amendment, Justice Fortas, with Warren and Douglas concurring, stated:

> "We are here dealing with an aspect of a basic constitutional right -- the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly, and freedom to petition the Government for redress of grievances.... As this court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant had every right to be...." (At 141, 142)

Defendants herein also had the right to be where they were and, as applied to them, Section 240.20 is unconstitutional.

III

SECTION 240.20.6 OF THE PENAL LAW IS UNCONSTITUTIONAL ON ITS FACE IN THAT IT VESTS UNFETTERED DISCRETION IN POLICE OFFICERS.

The United States Supreme Court and the New York Court of Appeals have consistently refused to uphold a penal statute when conduct protected by the First Amendment may be deemed by local enforcement officials to fall within the ambit of its prohibition. See, generally, Amsterdam: The Vagueness Doctrine in the Supreme Court, 109 U. of Pa. Law Rev. 67 (1960); Edwards v. South Carolina, 372 U.S. 229 (1963); Cox v. Louisiana, 379 U.S. 85 (1965); People v. Katz, supra. Such overbroad statutes violate the constitution because they vest power in local law enforcement officials to suppress constitutionally protected conduct at their own whim. Subsection 6 of Section 240.20 creates just such a situation. The statute states:

> "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
>
> "6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse."

Thus it is left to the discretion of a law enforcement official to determine which public gathering will be permitted to assemble and which will not. The danger of suppression of unpopular First Amendment activity under such a statute is obvious.

In Cox v. Louisiana, supra, defendants were accused of violating a Louisiana statute which read:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby ... crowds or congregates with others ... in or upon ... a public street or public highway, or upon a public sidewalk, or any other public place or building ... and who fails or refuses to disperse and move on ... when ordered so to do by any law enforcement officer ... shall be guilty of disturbing the peace."

The Supreme Court declared that statute unconstitutional on its face:

> "[T]he lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This, thus, sanctions

> a device for the suppression of the communication of ideas and permits the official to act as a censor."
>
> (Cox, supra, at 557.)

See also Edwards v. South Carolina, supra.

Section 240.20.6 is tainted with the same vice which infected the Louisiana statute in Cox. Both permit police to break up gatherings which are protected by the First Amendment. The statute herein actually invites a policeman to order any gathering to disperse whenever, in the exercise of his unfettered discretion, the officer feels that a risk of "public inconvenience, annoyance or alarm" is created by the group. Yet every political gathering in the street may create some risk of "public inconvenience, annoyance or alarm", but this statute purports to allow every policeman to determine, without standards, which political groups will be allowed and which will not. The Supreme Court has unequivocally forbidden such a result. In Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940), a broad anti-picketing statute was declared unconstitutional because:

> "The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview."

In People v. Katz, supra, the New York Court of Appeals ruled that Section 692h-1.0 of New York City's

Administrative Code, prohibiting street obstructions, was unconstitutional on its face since:

> "Although there is no allegation in this case that the police officer was guilty of discriminatory enforcement of Section 692h-1.0, the broad prohibitive language of the statute together with the lack of any defined standards for judging violations renders it peculiarly susceptible to arbitrary enforcement. Broad regulatory statutes such as Section 692h-1.0 have been held unconstitutional, particularly where they operate to restrain the exercise of First Amendment rights."

The Court concluded, in words equally applicable herein:

> "It is, of course, appropriate for municipalities to enact legislation designed to promote general convenience on public streets. On the other hand, streets have always been recognized as a proper place for the dissemination and exchange of ideas [citing cases]. Where a statute is couched in such broad language that it is subject to discriminatory application, the resulting infringement on the exercise of freedom of speech far outweighs the public benefit sought to be achieved."

A standard almost identical to that herein (i.e., risk of "public inconvenience, annoyance or alarm") has been condemned by the U.S. Supreme Court in Terminiello v. Chicago, 337 U.S. 1 (1949), as being unduly restrictive and unconstitutional. There the Court declared (at 4):

> "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.... That is why freedom of speech, though not

> absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest."

Since the statute herein mandates that a policeman disperse a group whenever his whim tells him it creates a risk of "public inconvenience, annoyance or alarm", it flies squarely in the teeth of Terminiello which expressly forbids the suppression of First Amendment activity merely because the conduct creates a risk of "public inconvenience, annoyance or unrest." Thus, this statute is unconstitutional, not only because it is an invitation to unconstitutional application, but also because it requires state suppression of unquestionably protected First Amendment activity.

It cannot be said that this statute is constitutional because it punishes the refusal to obey only a "lawful" order to disperse, because according to the statute such an order would be "lawful" if the policeman issuing it believed that a risk of "public inconvenience, annoyance or alarm" was created. Terminiello has already decisively held such a standard of "lawfulness" to be constitutionally defective. Policemen are not constitutional lawyers and cannot determine whether a dispersal order is constitutional in a given circumstance. And even if he could the accused is still not presented with an ascertainable standard of guilt; he, instead, is called upon to second-guess the constitutional question decided in the first instance by the officer. The standards for issuing such an order must be set forth in the statute itself in order to guide and control the law enforcement official as well as the actions of a political demonstrator. It is scant solace to a person attempting to exercise First Amendment rights that a conviction under this statute may not be sustained because the dispersal order was not "lawful". Once the gathering is dispersed, the suppression has been achieved, whether or not a conviction follows. Even without regard to subsequent conviction, the "chilling effect" of so overbroad and vague a criterion renders the statute a definite threat to the exercise of our constitutional freedom. See Dombrowski v. Pfister, 380 U.S. 479 (1965). As such, it cannot be permitted to stand.

IV

SECTION 240.20.5 OF THE PENAL LAW IS UNCONSTITUTIONAL AS APPLIED HEREIN.

As the facts demonstrate, the hour of the arrests of the defendants, as well as the events surrounding the protest which was taking place, all establish that there were virtually no persons on the streets and sidewalk in the location in question except those engaged in the protest, of whom the defendants were a part, and the police.

The entire block on which the demonstration took place had been barricaded at both ends by the New York City Police Department. No vehicular traffic was permitted; pedestrian traffic was rigidly controlled. Many policemen were stationed along the block. People were forced to request permission from the police to cross the barricades and enter the area of the demonstration. It was in this context that the defendants were arrested and charged with a violation of Section 240.20.5 (obstructing vehicular or pedestrian traffic).

Public streets have traditionally been viewed as a proper place for the dissemination of ideas. Hague v. CIO, 307 U.S. 496 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1940). Indeed, where the streets have been closed to pedestrian and vehicular traffic, the state lacks the power to punish persons engaged in First Amendment assemblage on the ground that the assemblage obstructed free passage through the street. Cox v. Louisiana, 379 U.S. 85 (1965); Edwards v. South Carolina, 372 U.S. 229 (1963).

If the concept of "obstruction" is applied to permit the punishment of those persons who congregate upon a street or sidewalk which is free of traffic, the statute falls afoul of People v. Katz, 21 N.Y. 2d 132 (1967). In Katz, the Court voided a New York City anti-obstruction ordinance because it permitted an arbitrary determination of what constituted an obstruction. To call the activities of the defendants an obstruction in the absence of traffic would be an equally arbitrary determination causing an impermissible interference with First Amendment rights. Thus, in order to sustain a conviction, the People must demonstrate not only that the activities of the defendants were not, in fact, constitutionally protected, and not only that the disorderly conduct statute is not unconstitutional for the reasons given above, but also that the particular defendants in question actually blocked some traffic. The facts, it is submitted, show that such a blockage simply did not occur.

CONCLUSION

For the above stated reasons, the charges against all defendants should be dismissed.

Respectfully submitted,

WILLIAM H. SCHAAP,
JOHN MAGE,
Attorneys for Defendants.

Title: P.P. Pt Authority **Ref:** Trailways

Initial: RR

1. **Name of Defendant** (Age) (Occupation) **Address** **Tel.**
   Ronald Riley.
2. **Charges:**
3. **Arraignment:**
4. **Counsel Assigned:** (Date)
5. **Trial Court and Judge:**
6. **Bondsman:**
7. **Amounts of Bail set:**
8. **Paroled:**
9. **Court, Dates (and other things to be done):**

	Date	**Comment**
a.		
b.		
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		

Poor Person

10. **Facts** **Reported by:** **Noted by:**

a. **Place:**

b. **Time and Date:**

c. **Arresting Officer:** **Badge:** **Pct.**
and others:

d. **Witnesses:** **Addresses** **Tel.**

1.

2.

3.

4.

Age 18.

e. **What Happened:**

Poor Person:

Student: H.S. of Commerce.

Works Part Time: in Grocery.

Family on Welfare.

$105 every 2 weeks,
for 5 people.

$16/month from U.S. - Disabled Vets.

his father

No Savings.

Property

Clothing & books = $200.00

No car.

Title: Trailways **Ref:** Pt Authority

Initial: F J.

1. **Name of Defendant** (Age) (Occupation) **Address** **Tel.**

JEAN FOREST

2. **Charges:**

3. **Arraignment:** (Date)

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

	Date	**Comment**
a.		
b.		
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		

Poor person

10. **Facts** **Reported by:** **Noted by:**

a. **Place:**

b. **Time and Date:**

c. **Arresting Officer:** **Badge:** **Pct.**
and others:

d. **Witnesses:** **Addresses** **Tel.**

1.

2.

3.

4.

e. **What Happened:**

1. Writer $5. OR $10

2. MONEY from book reviews about every 2 mos.

3. Husband works FOR FELLOWSHIP FOR RECONCILIATION ABOUT $100/week

SAVINGS - NONE

ONE SON

PROPERTY: $100.

No Car.

Title:

Trailways **Ref:** PORT AUTHORITY

Initial: CA

1. **Name of Defendant** (Age) (Occupation) **Address** **Tel.**
ALLEN CHERRY

2. **Charges:**

3. **Arraignment:** (Date)

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

	Date	Comment
a.		
b. Appeal Dismissed	10/2/65	
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		

S Nagler attorney on appeal

10. **Facts** **Reported by:** **Noted by:**

a. **Place:**

b. **Time and Date:**

c. **Arresting Officer:** **Badge:** **Pct.**
and others:

d. **Witnesses:** **Addresses** **Tel.**

1.

2.

3.

4.

e. **What Happened:**

Student at Bklyn College

No INCOME

PROPERTY!

Not a poor person

Title:

PP.

Ref: Trailways - Pt Author

Initial: DJ.

1. **Name of Defendant** (Age) (Occupation) **Address** **Tel.** 914

~~Mr.~~ JACK DEWS, [illegible] 60 Horton Ave BE 5-
New Rochelle, N.Y, 6920

2. **Charges:**

3. **Arraignment:** (Date)

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

	Date	**Comment**
a.		
b.		
c. Notice of Appeal	before 6/4	
d. Appeal as poor persons.	Granted perfect	for Oct term
e.		
f.		
g.		
h.		
i.		
j.		

MacNamee
Construction
Co.

Appeal

10. **Facts** **Reported by:** **Noted by:**

a. **Place:**

b. **Time and Date:**

c. **Arresting Officer:** **Badge:** **Pct.**
and others:

d. **Witnesses:** **Addresses** **Tel.**

1.

2.

3.

4.

e. **What Happened:**

POOR PERSONS appeal:

STUDENT - New Rochelle H.S.
(11th Grade).

unemployed, summer employment - temporary messenger at City Hall New Rochelle

$1.25/hr

supported by parents; Father: construction, $100 week.

Property - ~~$2,000~~ ~~$1,000~~ $75 - T.V., clothing, ~~encyclopedia~~, other books.

No car. $200 - family.

Savings: ~~$20.00~~ NO, (family)

17 Years old,

~~Father~~ :

Title: TRAILWAYS — **Ref:** PT AUTHORITY —

Initial: AM

1. **Name of Defendant** (Age) (Occupation) **Address** **Tel.**
MORTON ALEXANDER

2. **Charges:** §722

3. **Arraignment:** (Date)

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

	Date	Comment
a. Trial (stipulation)	9/15	
b. Adjourned to 6/13/66	with Walter	Brooks
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		

10. **Facts** **Reported by:** **Noted by:**

a. **Place:**

b. **Time and Date:**

c. **Arresting Officer:** **Badge:** **Pct.**
and others:

d. **Witnesses:** **Addresses** **Tel.**

1.

2.

3.

4.

e. **What Happened:**

September 21, 1965

Joseph Stone, Esq.
Asst. District Attorney
155 Leonard Street
New York, N. Y.

Dear Mr. Stone:

Here are the facts in the case of The People v. Morton Alexander about which we spoke this morning:

Approximately eighteen people were arrested at a CORE demonstration at the Trailways Office in the New York Port Authority Bus Terminal sometime in November of last year. They came on for trial before Judge Schreckinger in April, 1965 and all but two of them were convicted of disorderly conduct. The other two (Morton Alexander and Walter Brooks) were not present at the trial and excuses for their absence were presented. Morton Alexander is a student at The University of Washington in Seattle now entering his junior year. His case was adjourned to September 15, 1965. It is my understanding that an agreement was made that the trial of Morton Alexander was adjourned pending the disposition of appeals in companion cases. The case of Walter Brooks came on shortly after the trial of the other defendants and was definitely adjourned pending the disposition of the appeals in the other cases (Judge Reuben Levy so marked Brooks' complaint).

When Alexander's case came on for a hearing last Wednesday, an adjournment was requested. Neither Mr. Moynihan nor Mr. Stein opposed the request, although Mr. Moynihan maintained that he could not and had not agreed to an indefinite adjournment pending the disposition of the appeals in companion cases.

The Court (Judge Ringel) refused to grant either an indefinite adjournment or a long adjournment to a definite date. The fact that the appeals in the companion cases are being perfected and that permission has been sought and granted to appeal as ppor persons in some of the cases was before the Court at this time. Nonetheless, the case was set down for trial on October 11th and marked final against the defendant. Morton Alexander is supposed to begin school on September 27th and the Court knowing this, had stated on the previous day that his case could be disposed of before that time.

To try Morton Alexander while the appeals in companion cases identical to his own are pending, would be ridiculous. It is entirely possible that a three-day trial would be required which would involve a waste of resources in time lost by police officers, a Judge, an Assistant District Attorney, counsel for the defendant, etc. To try Morton Alexander on October 11th would not only be ridiculous, but also punitive in that it would involve a loss on his part of an entire school "quarter". I should think it would be much more sensible to adjourn the case for a substantial period of time (e.g., June, 1966) and await the outcome of the current companion appeals. In the event that the convictions are affirmed, Mr. Alexander would plead guilty. In the event of a reversal, I should think that you would be hesitant to prosecute him since the facts in his case are absolutely identical to those in the others.

If, in spite of all of this, you still feel that a trial is necessary, we are most willing to go along, but we would still suggest that a date at the end of December (during Christmas recess) would be more reasonable. As Mr. Alexander should be in school (if at all) on September 27th, I hope that we can come to some understanding before that time.

Very truly yours,

Stephen M. Nagler

SMN:grs

October 11, 1965

Morton Alexander
University of Washington
Seattle, Washington

Dear Morton:

Well, we went into court this morning, we found a Judge by the name of Gladwin sitting on the bench. We told him that it would take time to effect the other appeals and that the Appellate Term might not render the decision until March or April and we asked that he please adjourn it pending disposition of the appeals until some date thereafter.

He insisted on a definite date and we suggested June 13. The date was granted and I will expect to see you on the morning of June 13 in Part III, untillthen, have a good school year.

Sincerely,

SMN/cs

STEPHEN M. NAGLER

October 14, 1966

Mr. Jean Yearwood
134-25 166th Place
Bldg. 17A - Apartment 6D
Rochedale Village
Jamaica, Queens, N. Y.

Dear Mr. Yearwood:

I am the attourney for Robert Auerbach, Arnold Ghinger, Allen Kimbrell, Richard Brooks, Leslie Boyer, Richard Murphy, Philippa Poze, Marjorie Phyfe, Joyce Shurik, Allen Cherry, Franklin Alexander and Alfred James.

All of these people were tried and found guilty of violating the 722 of the Penal Law in Part 8C in the Criminal Court, County Committee of New York, before Judge Schreckinger on May 5, 1965.

I need five (5) - an original and four (4) copies - of the Complaint with Endorsements. In order to project the appeal for the November Term, I must have these quickly. As soon as you inform me of the cost, I will arramge to have you paid by return mail.

Very truly yours,

STEPHEN M. NAGLER, ESQ.

SMN/art

DEMONSTRATION: Picket of Trailways' counter (Port Authority Terminal)

Time: Saturday, November 7, 1964
12:30 - 1:30 P.M.

18 taken to 14th Pct., and given summonses (§ 722 P.L.)

✓Robert Auerbach
393 Riverdale Av.
Yonkers, N.Y.
(914)Yo 8-0562

✓Arnold Ghinger
115 Kimball Terrace
Yonkers, N.Y.
(914)Wa 5-6940

✓Allen Kimbrell
87-05 Chelsea St.
Jamaica, N.Y.
~~Gl 4-0558~~ 341-2916

✓Richard Brooks
266 Starr St.
New Haven, Conn.
(203)St 7-3928

✓Leslie Boyer or:c/o Facker
7 Van Buren St. 8 W. 71st St.
Albany, N.Y. N.Y.C.
482-4914

✓Richard Murphy
876 Richmond Ave.
Staten Island
~~Ar 3-0403~~ ~~477-5746~~

✓Ronald Riley ✓
104 West 144th St.
N.Y.C. [redacted]
Au 6-3436
O

✓Jean Forest ✓
876 Richmond Ave.
Staten Island
~~Ar 3-0403~~ 477-5746
O

✓Jack Dews ✓
60 Horton Ave.
New Rochelle, N.Y.
(914)Be 5-6920
O

Walter S. Brooks
44 N. Sheffield
Hamden, Conn.
(203)562-4076

NOT TRIED

✓Jennifer Miller
17 Jansen Ave.
~~Kingston~~, N.Y. Woodstock
(914)Fe 1-0768
O

✓Philippa Poze
609 Kappack St.
Bronx, N.Y.
Ki 9-4448

✓Marjorie Phyfe
~~395 Broadway~~ 8 Jones St, NY, NY
~~Cambridge, Mass.~~
(617)491-3847

✓Joyce Shurik
1541 Metropolitan Ave.
Bronx, N.Y.
Ta 2-1797

✓Allen Cherry ✓
2144 East 16th St.
Brooklyn, N.Y.
De 6-5034

✓Franklin Alexander
Bearsville, N.Y.
(914)Or 9-6813

Morton Alexander 67-40 Booth St
~~609 Amboy St.~~ F. Hills Queens
~~Brooklyn, N.Y.~~ ~~U. of Wash.~~
Di 6-5915 Brooklyn.

✓Alfred James
1032 John Ross Rd.
Chattenooga, Tenn.
(615)698-6773

SUMMONS ANSWERABLE: Nov. 12, 1964
Criminal Court (New York County)
Part I-C

41412/66

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

July 5, 1967

TO THE DEFENDANTS IN PEOPLE v.DEWS et al:

As some of you may have heard by phone, your convictions in the case of the People v. Dews et al, were reversed by order of the Appellate Term, 1st Department on June 15,1967. We have been advised by the District Attorney that he will not appeal.

Congratulations and thank you for your patience.

Yours Very truly,
Stephen M. Nagler
Stephen M. Nagler

SMN:n

Contributions are deductible for income tax purposes

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346 SEDFRE

STATE OF NEW YORK vs. DUE, PERDUE & STEPHENS, 1964-1965
(1964 WORLD'S FAIR DEMONSTRATIONS)

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SUPREME COURT, APPELLATE DIVISION
[illegible] Department, December [illegible]

[illegible]

- - - - - - - - - - - - - - - - - -

The People of the State of New York,

Appellant,

against

Peerless Insurance Company,

Surety-Respondent,

for

Lumos Myles et al.,

Principals.

Public Service Mutual Insurance Company,

Surety-Respondent, 762[illegible]

for to

Angel Alama, et al., 773[illegible]

Principals;

The Stuyvesant Insurance Company,

Surety-Respondent,

for

[illegible] Alvarez, et al.,

Principals.

- - - - - - - - - - - - - - - - - -

Appeals from 57 orders of the Supreme Court at Special Term (Korn, J.), entered in New York County, which granted motions by the Insurance Company Respondents to remit the forfeiture of bail of defendants in criminal actions.

Emanuel Thebner (Murray Bransilber with him on the brief), attorney for Respondent Peerless Insurance Company.

E. Edan Spencer, attorney for Respondent Public Service Mutual Insurance Co.

Sylvan Schwartz of counsel (Harry Salvan with him on the brief; Aaron Slavetsky, attorney) for The Stuyvesant Insurance Company.

Richard H. Kuh of counsel (Michael R. Stack with him on the brief; Frank S. Hogan, District Attorney) for appellant.

BREITEL, J.:

The People appeal from 57 orders granting motions made by professional compensated sureties to remit the forfeiture of bail of defendants in criminal actions for their nonappearance at the court-appointed times. It is urged that in none of these cases did the surety sustain its burden of proving exceptional circumstances and its further burden that the People had not suffered any loss of rights as a result of the nonappearance.

In all but four of the cases the bailed defendant has been surrendered and in all but eleven a final disposition has been made in the criminal action. In two of the four cases in which the defendant has not been surrendered, he was confined in a New York City penal institution. In none of the cases did the People present any proof that the People were prejudiced by the loss of evidence, the unavailability of witnesses, or the incurring of expenses by the People or others, or that the disposition was otherwise adversely affected by the delayed appearance of the bailed defendant. The District Attorney argues, however, that the burden of proof is on the surety and prejudice to the People should be inferred or presumed from the bald fact of delay. All the criminal actions had been pending in the Criminal Court of the City of New York and involved no charge higher than that of misdemeanor. Bails ranged from $500 to $1,500. All the motions were made and granted in Special Term of the Supreme Court.

The governing statutes are found in the Code of Criminal Procedure. Section 593 provides:

> "If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited, instead of bail, as the case may be, is thereupon forfeited.
> . . . ."

Section 594 provides:

> "If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just."

Sections 595, 595-a, and 596 provide for the enforcement of the forfeitures; their content is not relevant to the present issues. Section 597 provides for the relief obtained by the sureties in the instant appeals. It reads:

> "After the forfeiture of the undertaking or deposit, as provided in this article, the court directing the forfeiture, the county court of the county, or in the city of New York, the supreme court may remit the forfeiture or any part thereof, upon such terms as are just."

Section 598 provides that an application for remission of the forfeiture must be made within one year after the forfeiture is declared and "can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture."

The procedure, substantive rules, and the problems associated with them go back to the earliest times. Except for historical interest and to observe the evolution from a doctrine of very strict forfeiture to a somewhat relaxed but still firm doctrine, it would not be necessary or profitable to elaborate on the old cases or their sequence. In quite recent times the Court of Appeals has made clear and explicit the twin governing principles, namely, that a remission is justified only in exceptional circumstances and that there must have been no loss of rights or prejudice to the People. As a corollary rule, the surety has the burden of proof with respect to both bases for a requested remission. (People v. Fiannaca, 306 N.Y. 513; People v. Continental Cas. Co. 301 N.Y. 79, 83-84; cf. People v. Parkin, 263 N.Y. 428, arising under the now-repealed requirement that the District Attorney certify that the People have lost no rights by reason of the nonappearance of the bailed defendant.) The principles and the corollary rule are substantially the same as prevail elsewhere in the United States (8 C.J.S., Bail, §§90-93; 8 Am. Jur. 2d, Bail and Recognizance, §§165-195).

In the *Fiannaca* case, Judge Fuld summed up the applicable principles:

> "Section 597 of the Code of Criminal Procedure authorizes a court to remit a forfeiture of bail 'upon such terms as are just'. When the statute was first passed in its present form, this was taken to give the courts a 'discretion almost absolute'. (*People v. Spear*, 1 N.Y. Crim. Rep. 538, 541.) But, with time and cases, standards developed, the courts tending to apply one set of criteria where the defendant ultimately put in an appearance and another where he did not. Where a defendant is produced within a reasonable time after forfeiture, a remission will be granted if the People have not lost any rights as a result of his nonappearance, especially if his failure to appear was other than deliberate and willful. (See *People v. Continental Cas. Co.*, 301 N.Y. 79, 83, 84; *People v. Phelan*, 219 App. Div. 80, 82; *People v. Coman*, 5 Daly 527, 531, appeal dismissed 63 N.Y. 611; see, also, Note, 84 A.L.R. 420.) On the other hand, where the defendant is not produced at all, or turns up only after a long lapse of time, the courts will ordinarily deny remission without regard to the mitigating factors asserted in connection with his nonappearance. There are exceptions, of course. Death, insanity, imprisonment on another charge may, under some circumstances, warrant remission. (See, e.g., *People v. Parkin*, *supra*, 263 N.Y. 428; see, also, *People v. Wissig*, 7 Daly 23; Note, 7 A.L.R. 392; Note, 27 A.L.R. 412; cf. *Taylor v. Taintor*, 16 Wall. [U.S.] 366; *People v. Greene*, 253 App. Div. 704; *People v. Rich*, 35 App. Div. 60, 62.)
>
> "Apart from these considerations, however, the only factor which the courts of this state have considered as basis for remission where the principal disappears is where the surety will thereby suffer 'extreme hardship', such hardship as 'will cause destitution to a family, deprive children of support and education, or creditors of their just debts.' [citing cases]. By and large, the courts have tended --- 'where the accused was *not* in custody and produced' (*People v. Parkin*, *supra*, 263 N.Y. 428, 432, emphasis supplied) --- to hold sureties to strict liability upon the disappearance of their principal." (516-517, fn. omitted.)

[illegible] in opposing the applications, has often [illegible] proof of facts [illegible] available to him. At the same time [illegible] circumstances have been [illegible] A good illustration is the prior criminal [illegible] and the circumstances of the pending criminal charge against the defendant, bearing, as they do, upon his familiarity with criminal proceedings and the likelihood whether he is associated with others highly sophisticated in the manipulation of criminal proceedings.

Moreover, as the District Attorney has correctly pointed out, the statute authorizes partial remissions in appropriate cases, but the practice, at least in this department, has been to handle the matters on an "all or nothing" basis, disregarding the fact that the fault of the principal and the prejudice to the People may be of varying and counterbalancing degrees. In such cases partial remissions may well afford a more just and delicate adjustment in the dispositions. With the looseness of practice there has developed the concomitant that, in granting the remissions, the court most often does not specify the facts found or the reasons for the remission, except in the most general terms.

Recognizing that the past looseness of practice has been the joint responsibility of all the participants, a just resolution of the problem requires as to the past a somewhat more relaxed application of the principles and [illegible] but for the future a stricter [illegible] would be expected. Moreover, [illegible] of the con- [illegible] exposed in these [illegible] standards and controls in the highly discretionary application of [illegible] rather than [illegible] the court, in granting remissions, should detail with precision the facts found and the reasons for its disposition. It is all but axiomatic in the judicial process that the need to assign reasons for a disposition is the best assurance that the decision is or will be right, or if wrong, that it can be easily criticized and corrected.

Before disposing of the [illegible] appeals it is convenient to set forth, generally, the reasoning which this Court follows in making such dispositions.

1. The Burden of Proof

While the surety has the burden of proof this does not mean, regardless of the kind of facts involved, that it should carry the burden of establishing the facts to the utmost conclusively documented possibility. It should suffice, within the principles and the corollary rule elaborated in the *Fiannaca* case, *supra*, to meet the burden of going forward, as distinguished from the burden of proof, that the surety, by an affidavit of a person knowing the facts, establish them prima facie. Thus, where the bailed defendant makes affidavit that he did not appear at the appointed time because he was confined in a New York City municipal hospital or prison, a state institution, or a voluntary hospital in the City of New York, the surety need not also supply the certificate of any of these institutions. If the averment is questioned the District Attorney can verify it by the simplest of communications, so long as the defendant's assertion is particular enough, and hold him responsible for a false affidavit too, if that be the situation. With respect to confinements elsewhere, the surety is obliged in the first instance to establish the facts by certificate or affidavit emanating from the institution or other proof of like reliability. In no event is the surety's own hearsay affidavit of the slightest value.

There may be other situations where the surety's proof will sustain his burden of going forward, prima facie, and the burden of going forward will pass quickly to the District Attorney, particularly in the matter of prejudice to the People. It should be enough that the defendant, his attorney (if any), and the surety have stated whatever knowledge they possess or deny having and assert that they believe that the People have suffered no loss of rights or prejudice as a result of the delay. Then, it should be the responsibility of the District Attorney to come forward and show any loss of evidence or witnesses, inconvenience and expense to the People, the witnesses or to others, or other adverse effect on the prosecution because of the nonappearance of the bailed defendant at the appointed time or times. As noted earlier, in none of the present cases has the District Attorney undertaken to make such a showing but, instead, has relied on his view of the burden of proof resting on the surety.

And to be sure, the fact that the bailed defendant was either acquitted or convicted does not, by the fact itself, establish that there was no prejudice to the People. Even a final disposition on the merits is only one factor, and is quite unrevealing as to the cause, the expense, the inconvenience, or the limitations, perhaps reflected in the result and effected by the delayed appearance of the defendant.

On the other hand, every calendar call on which there is a default is not necessarily more than a minimal inconvenience, if even that, to the People. The defendant, his attorney, or the surety are not likely to know whether police or civilian witnesses were required to be present, or have been made less available, or whether any other circumstances requiring repeated efforts or expenses have been incurred as a result of the defendant's default.

The professional surety does perform a valuable social function and its operation should not be rendered uneconomic or so difficult that its service may be denied absolutely, or effectively, to persons charged with crime.

2. Misunderstandings by Defendant

In some 27 of the instant appeals the asserted ground for remission is that the defendant, because of language difficulties or ignorance, misunderstood when he was required to attend court. The eventual delay in appearance ranged from as little as one day to 156 days. This is the least reliable excuse and the least sufficient. It is too easily fabricated. Moreover, even in the extraordinarily rare case where misunderstanding may be excusable, the surety must show in detail all the circumstances, supported by transcripts of the relevant minutes. The defendant's attorney, if any, should also supply an affidavit. Where the delay is for more than a very short period, the excuse becomes even less plausible and should be supported by persuasive detailed affidavits of persons with personal knowledge.

In this class of application, defendant's prior criminal record is especially relevant. So are the nature and circumstances of the crime with which he is charged for reasons discussed later.

As a minimum the surety should establish that the defendant was not informed of the date for his appearance or had a substantial reason for not knowing the date, because of ignorance or a disability of mind or the senses. It should also appear what had been done by his attorney, if any, or the surety, to make sure that the defendant understood and would comply with the direction to appear.

Because of looseness in past practice, the instant appeals should be handled on a relaxed basis, but for future forfeitures and remissions, the excuse should rarely suffice and then only on the most cogent showing based on competent evidence, and, except in explained unusual circumstances, on corroborated proof.

3. Illness of Defendant

Of course, the affidavit of the surety, relying on hearsay, is insufficient to establish the excuse for defendant's nonappearance on the ground of illness. Moreover, the defendant's affidavit must be detailed and explicit, showing that the illness was a disabling one or made appearance hazardous. A medical certificate for a serious disabling illness may suffice, but for anything less a detailed explanatory medical affidavit should be required. And then, the failure at the appointed time or immediately thereafter to advise the court by attorney or other person of the nonappearance should be explained by plausible and sufficient affidavit of one with knowledge of the facts.

Again, because of the looseness in past practice a relaxed approach may be justified as to past cases, but for future remissions the requirements should be strictly applied.

4. Illness of Others

Only three defendants gave illness of relatives as an excuse for nonappearance. This is an unreliable excuse. In order for it to be supported, for future remissions at least, there should be evidence concerning the nature of the illness and its effects equivalent to that required when the defendant himself is ill. Beyond that, there should be detailed and corroborated evidence that the defendant was required to attend the ill person, or others left unattended, because of the illness, together with detailed, plausible, and sufficient explanation, why the excuse could not be presented to the court at the appointed time by another.

It will be the rare case, indeed, in future remissions, where this excuse should suffice.

5. Out-of-State Criminal Confinement

An out-of-state criminal confinement should, ordinarily, not avail, unless the defendant has been first surrendered. Ordinarily, if the fact is established, the excuse should suffice; the falseness of the arrest or confinement in the other jurisdiction is not material. In this connection it is material to distinguish between the situation where bail is forfeited and when a remission is sought. (See, generally, in this area, e.g., *People v. [illegible] Ins. Co.*, 208 Misc. 504, granting remission after defendant's surrender; *semble contra*, *Phoenix Fire Ins. Co. v. Mowatt*, 6 Cow. 599; *Taylor v. Taintor*, 16 Wall. (83 U.S.) 366, 371, cited in *People v. Fiannaca*, *supra*, 306 N.Y. 513, 517; *People v. Dellamura*, 28 N.Y.S. 2d 584, remission denied on ground of statute of limitations and defendant had not surrendered; cf. dictum in *People ex rel. Nugent v. Police Comm'rs*, 114 N.Y. 245, 249, favoring remission with respect to a federal arrest; dictum, *Mtr. of Continental Cas. Co. v. People*, 202 Misc. 740, 743; *Meresheimer v. Rowe*, 11 Daly [illegible], involving forfeiture prior to surrender; see, also, 8 C.J.S., Bail, §92, at pp. 263-264; Anno, Bail - Discharge of Sureties, 4 A.L.R. 2d 440 *et seq.*)

It should suffice that a surety guarantee the defendant's appearance whenever [illegible] unless barred by [illegible]; it should not also be obliged to guarantee his good behavior or his good fortune in avoiding other confinement. Certainly, the precedents are neither [illegible] nor so [illegible] to dictate a contrary view. [illegible], the right to remission should await, except again, in extraordinary circumstances, the surrender of the bailed defendant. In this connection the comment in People v. Fiannaca, supra (306 N.Y. 513, 517) quoted above is quite relevant, namely, "Death, insanity, imprisonment on another charge may, under some circumstances, warrant remission". To be sure, Judge Fuld was not referring, necessarily, to out-of-state confinement, but the ease with which state lines may be and are crossed these days suggests a broadening of the view which may have [illegible] prevailed. On the other hand, confinement in a foreign country is quite another matter and upon that the court does not now pass.

In this class of case the surrender of the defendant, before an application may be made, will, generally, be essential. Until surrender, there is still no performance of the obligation to appear, and it is not yet known whether expense to the People will be involved in producing the defendant's appearance on the bailed charges. On the other hand, there will be problems for a surety where the defendant is confined elsewhere and the limitation period provided by section 598 of the Code of Criminal Procedure will expire before he may be surrendered. This may place a special burden on the surety to avoid declaration of a forfeiture in the first instance and to obtain proper adjournments to prevent the running of the limitation period. Or, perhaps, the surety may apply for remission within the one-year limitation period and ask the court to condition the remission upon the surety's undertaking to surrender the defendant when his out-of-state confinement is ended and to pay any expenses of procuring the defendant's presence before the court. The statute provides that the court in granting remissions may impose such terms as may be just (Code Crim. Proc. §597).

6. Relevant Circumstances

In addition to considering specific grounds for remission, there are other factors which may or should control the disposition of a motion for remission.

Whatever the excuse, if the defendant has contributed by careless, reckless, or wilful act to the event offered as an excuse, it should, generally, require a denial of the motion. Similarly, if the surety, directly or through the attorney for the defendant, has been negligent in maintaining the surety's obligation to see that the defendant is aware of his obligation to appear at the appointed time, this militates against,if it does not negate entirely, the right to a remission. It is still true to some extent that "[w]hen bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment." (*Taylor v. Taintor*, *supra*, 16 Wall. [83 U.S.] 366, 371). On the other hand, there may be cases where the delays and adjournments sought and obtained by the People have contributed to lulling the defendant into a laxity or outright default, and the delay to the People has been comparatively trivial. There may be other conduct by the People offsetting a relatively minor default or delay by the defendant.

As already touched upon, the defendant's prior criminal record and the circumstances of the current charge of crime are relevant in determining his motives for nonappearance and evaluating the plausibility of his excuse. In classes of crimes most often associated with organized groups, such as commercialized gambling, narcotics violations, and prostitution, the defendant is often not operating alone as an individual. If that be the case, then it is equally likely that members of the group with which he is associated are sufficiently sophisticated and motivated to attempt to manipulate the criminal proceedings. (This implies no facile assumption of such association, but neither is it any gullible ignoring of the facts of life in a society in which commercialized crime is highly organized.*) Consequently, with respect to such defendants, it is necessary that the surety show that the defendants' alleged acts upon which the People rely to sustain the charges and the events upon which defendants rely as an excuse were of a pattern independent of concerted activity, associated lawyers, or others who were in a position to advise them, or to make appearances and explanation for them when occasion required it and they could not appear. The similar burden need not be as heavy, of course, for persons charged with highly individualized crimes, like reckless driving, and in a proper case, like larceny or assault.

While it is incumbent upon the motion court to assess the character of the crime charged and whether or not it may have arisen in the organized crime complex, it is also true that there is no warrant for imposing forfeiture or withholding remission as an added sanction for the crime itself. Bail stands as security for the appearance of the defendant in a criminal action; in neither the amount in which it is fixed nor the occasion for its forfeiture or remission should the determination be influenced by the desire, or even need, to impose additional punishment upon the defendant. On the other hand, regardless of the "accidental" quality of the crime, its individualized character, or even the innocence of the defendant, a remission is not justified where the excuse for default is wanting or the People have been prejudiced.

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* See, e.g. Matter of Mogel, 18 A D 2d 203.

Lastly, even an acquittal of a crime which arises normally in an organized crime complex is not in and of itself much evidence that the defendant has not been associated with others in the defense of the prosecution.

7. Partial Remissions

There are instances where a partial remission should be applied rather than a total forfeiture or a total remission. There are cases involving, so far as one can tell, individualized crimes where the defendant is not wholly without fault in failing to appear. Nevertheless, especially in the light of the amount of the bail forfeited, forfeiture might work too severe a penalty on the defendant, assuming that he, his family, or his friends are responsible to the surety. For that matter the loss to the surety may also be quite disproportionate to the degree of fault involved either on the part of the defendant or the surety. With respect to the surety it might show unusual effort and expense on its part to locate or procure the presence of the defendant. This merits consideration. In this respect, even if the crime charged is in the organized crime category, the surety may be able to make out a case meriting at least partial remission.

Because partial remission places such great discretion in the court, it is desirable to have some uniformity of standards. It is, therefore, especially desirable that the motion court not only explain the ground for the remission but the basis on which the proportionate remission is determined.

8. Concluding Considerations

Remission is not the rule but the exception after forfeiture. This is the teaching in the *Piannaca* case, *supra*, and it is the teaching of all the cases preceding it and those following it. The burden of proof, to be sure, rests on the surety if ground for remission is to be established.

The factor lending strictness to the application of the principles is the need to avoid trifling with the administration of criminal justice, let alone cynical manipulation, and the fact that the surety has the means and the motive to require a defendant to comply with the orders of the court. If he has not, then the defendant should not be bailed, or the money sum should be readily forfeited without further recourse.

There are, however, two countervailing factors sometimes staying the harsh application of the principles. Professional sureties and the bail device perform a useful and humane social purpose in obvious ways. In addition, the possibility of remission in a proper case motivates the surety and others to incur expenses and engage in substantial efforts to procure the appearance of a defendant after forfeiture. Remission made too facile, however, will defeat all the purposes expressed in these several factors, those making for relaxation as well as those making for strictness in the application of the principles.

Sensitive consideration of the several factors is the touchstone to be applied in determining whether there should be a remission or not or whether there should be a partial remission. On no view can there be automatic remissions based on rules-of-thumb related to shortness of delay, final disposition on the merits of the criminal charge, other confinement of the defendant, or, of course, the fact of his surrender, even if by the surety.

All of the instant appeals, except those in which the Court may affirm the remissions, reflect a barrenness of facts which would [illegible] in order to permit sensible application of the [illegible]. [illegible] relies upon *ex parte* [illegible] [illegible]. In some of these cases, indeed, the final disposition, if any, is not shown. The records on these appeals might suffice for the application of mechanical rules, but not for the rational exercise of a judicial discretion within the applicable principles subject to the policies upon which they are based. For the future such records should not suffice to support an exercise of discretion on review by this Court.

* * *

It is now appropriate to turn to the disposition of the individual appeals. For convenience, the classification used by the District Attorney in grouping the appeals is followed.

A. The Misunderstanding Cases

In the cases in which the principals were Louis Dixon, [illegible] [illegible], [illegible] [illegible], [illegible] [illegible], Leroy Myles, Antonio [illegible], and Abdul Malik the orders granting the motions for remission of the forfeitures of bail should be reversed, and the motions remanded to Special Term with leave to the respondents to supply proper proof. In each of these cases only the affidavit of the surety was supplied. Moreover, the standards discussed above should be applied, except that since they arose in the past their application need not be as strict as should be the requirement in the future.

In the case of Louis Dixon, however, in which the delay was as long as 61 days, even if adequate affidavits were supplied, the remission should [illegible].

In the case of David Beasley the order granting the motion for remission of the forfeiture of bail should be modified to limit the remission to 50% of the forfeiture because of the long delay in the surrender of the defendant, namely, 156 days.

In the cases of Angel Alamo, Arthur Felder, Henry Powers, Angelo Nanni, George Gilchrist, Charles Nicholson, Jose Lago, Joseph Stroud, Constantine Zappo, Frank Morris, Arthur Everett, Theodore Kaminski, John Williams, George Isaacs, Bernice Spriggs, Johnson Hinton, Rene Alvarez (two cases), and Ernest Gill the orders granting the motions for remission should be affirmed. These affirmances are on the basis that the cases arose in the past under the loose practice which had developed. They do not constitute a valid precedent for the future when the standards should be strictly applied.

B. Illness of the Defendant Cases

In the cases involving the principals Ronald Goodman ($1,000 forfeited February 3, 1964), Pedro Reyes, and James Benson, the orders granting the motions for remission should be reversed and the motions remanded to Special Term with leave to the respondents to submit additional proof. In each of these cases only the affidavit of the surety was submitted, and in the case of James Benson the hospital certificate supplied does not cover the whole period during which the principal failed to appear.

In the cases of Ronald Goodman ($1,500 forfeited July 3, 1963), Maria Teruel, Nathaniel Scott, James Fairclough, Hilliard Neal, Zachariah Latta, William Braddock, Lucius [illegible], and Elaine Brown, the orders granting the motions for remission should be affirmed. The affirmances are on a retrospective basis; for the future the standards should be strictly applied.

C. Illness in the Family

In the cases involving the principals Florence [illegible], Thomas Greene, Oliver Slade or Shade (three cases), and Floyd Robinson, the orders granting the motions for remission of the forfeiture of bail should be affirmed. The case of Floyd Robinson is an unusual one. Bail was forfeited in his case on December 9, 1963. Five days before, on December 4, 1963, sentences on him in two other cases were suspended on condition that he report to the Federal hospital at Lexington, Kentucky, for treatment. He was admitted to that hospital on December 12, 1963 and no final disposition is shown, nor even that he had surrendered. These affirmances are solely on a retrospective basis; in future cases the standards should be strictly applied.

D. Other Incarceration

In the cases involving the principals Rudolf [illegible], Celso Carillo, Joseph Pitts, Francisco [illegible], Riley Ford, and Sergio Chapparra, the orders granting the motions for remission of the forfeiture of bail should be affirmed. In each of these cases the confinement on another charge was established either by a certificate of the prison or there was confinement in a local institution of the character discussed above.

In the case of Fred [illegible] the order granting the motion for remission should be reversed and the motion remanded to Special Term, with leave to the surety, if it be so advised, to submit additional proof and propose conditions in accordance with the views above expressed. In this case the principal has been confined outside the State and has not yet been returned for surrender and appearance before the court.

In the case of Eddie Cohen the order granting the motion for remission should be reversed, and the motion remanded to Special Term with leave to the respondent to supply proper proof. The warrant of arrest for Eduardo Cohen Padron in Florida does not establish confinement for any particular period and is not perfect in establishing the identity of the person described in the warrant as that of the bailed defendant.

B. Miscellaneous Cases

In the case involving the principal Oscar Winslow the order granting the motion for remission of the forfeiture of bail should be modified to limit the remission to 80% of the bail forfeited. In this case the principal claimed that he could not make court because the New Jersey Turnpike was fog-bound. This excuse is quite inadequate. On the other hand, he was being held to answer a charge of driving while intoxicated, there had been two prior trial adjournments, his bail was $500, and there was only a two-day delay. Eventually he pleaded guilty and was fined $50. Under the circumstances a forfeiture of 20% of his bail is quite adequate.

In the two cases involving the principal Rocco [illegible] the orders granting the motions for remission should be modified to limit the remission to 50% of the forfeited bail. The bail in each of these cases was $1,500. The excuse offered was quite inadequate; it was that the defendant owned a house in South Carolina that was burned down. The delay in appearance was a long one of 237 days. In view of the long delay and the poor excuse a total remission is unjustified. On the other hand, since the bail amounts are so large relative to the misdemeanor charged a forfeiture of half the bail is probably appropriate.

In the case of Robert [illegible] the order granting the motion for remission should be modified to limit the remission to 80% of the bail. The amount of the bail was $500, the charge was that of reckless driving, and the excuse given was that the principal was waiting for a paycheck to arrive so that he could pay his fine when he appeared in court. The excuse was a weak but likely one and the delay was only 12 days. A forfeiture of 20% of the bail, namely, $100, is an adequate sanction imposed on top of the fine which the principal paid in connection with the criminal charge proper.

* * *

Accordingly, as indicated above, the orders granting the motions for remission of the forfeiture of bail should be respectively reversed, modified, and affirmed, in each instance, on the law, on the facts, and in the exercise of discretion, without costs to either party.

Settle order in cases in which the order is not to be affirmed.

ALL CONCUR.

13 bonds → 9 are National's
9 indiv. persons → 6 are National's

JUDGMENTS:

Danny Pollock
1430
Bond # 81417
4-23-64 (1851)
$500-
forf: 5-7-64
Part III
~~dxx~~ Jdt: 6-17-64
index # 5365

5208 Cabonne
St. Louis, Mo.
FO 1-3285

Melvin Owens ?
Melvyn Owens
1124
bond # 81145
4-22-64 (722-2)
$500
forf: 5-5-64
Part III
jdt: 6-18-64
index # 5360

John Silverberg, Esq. Gol

Melvin Owens
Melvyn Owens
1122
bond # 81144
4-22-64 (1851)
$500
forf: 5-5-64
part III
jdt: 6-18-64
index # 5359

Gilbert Banks
2211
bond # 81129
4-22-64 (722)
$500
Part I-B
~~jdtx~~ forf: 6-22-64
jdt: 11-25-64
index # 12845

319 Van Buren Ave
B'klyn Gol

Marshall Brown
1316
bond # 79441
4-23-64 (2036)
$500
forf: 5-25-64
Part III
jdt: 11-25-64
index # 12809

84 Ravine Avenue
Yonkers, N.Y.
YO 3-7190

never told him when
to report – never had
any intention to
default – appeared
~~re~~ next day
when good faith

Marshall Brown
1300
bond # 81401 x
4-24-64 (1851)
$500 forf: 5-25-64 Part III
jdt: 11-25-64 index # 12810

Ronald ~~Coxx~~ Coy
YO 645 bond # 81578
4-22-64 (1851)
$500 forf: 9-10-64
Part III jdt: 11-25-64
index # 12828

13/2 MacDougal
Galam
982-8798

Lucille Plummer
Lucille Plummes
1326 bond # 79475
4-23-64 (2036)
$500 forf: 5-25-64
Part III jdt: 11-25-64
index # 12811

177 Palma St.
St. Augustine, Fla

same person
1310 bond # 81394
4-22-64 (1851)
$500 forf: 5-25-64
Part III jdt:11-25-64
index # 12812

Frank Roberson
1317 bond # 79451
4-23-64 (2036)
$500 forf: 8-11-64
Part III jdt: 11-25-64
index # 12820

717 Gwen Ave
Tallahassee, Fla

same person
1301 bond # 81402
4-22-64 (1851)
$500 forf: 8-11-64
Part III jdt: 11-25-64
index # 12819

Priscilly Stevens ←
Patricia Stevens
1312 bond # 81395
4-22-64 (1851)
$500 ~~jdt: 11-25-64~~ forf: 7-9-64
Part III jdt: 11-25-64
index # ~~12828~~ 12818

14670 Filmore St.
Miami Fla
CE 8-1965

Paul Davis
1173 bond # 81536
4-22-64 (1851)
$500 forf: 6-18-64
Part III jdt: 11-25-64
index # 12814

109-38 159th St
Jamaica
(Childrens Shelter)

in state training school N.Y.
Otisville
now in New Hampton Training School

legend: the first number under the name is the doeket number in the Criminal Court; the bond number follows on the same line followed by the date of writing of the bond and the charge involved the amount follows; then the dateof forfeiture. the part of the Criminal Court, and the date of judgment...the index number is the number ~~fxxxx~~ under which the judgment was filed in the Queens county clerk's office.... 88-11 Sutphin Blvd. Queens entered

		Band #	fanf	Part	Jdt date	amt	indx # ca. clk
4-23	1430 Danny Pollack	81417 1851	5-7-64	III	6-17	500	5365
4-22	B F L N Melvyn (vin) Owens 1124	81145 722-2	5-5-64	III	6-18	500	5360
4-22	" 1122 "	81144 1851	5-5	III	6-18	500	5359
4-22	Gilbert Banks 2211 +	81129 722	6-22	1-B	11-25	500	12845
4-23	Marshall Braum 1316	79441 2036	5-25	III	11-25	500	12809
4-24	" 1300 "	81401 1851	5-25	III	11-25	500	12810
4-22	Ranald 40645 ~~#~~ Lacy *	81578 1851	9-10	III	11-25	500	12828 ~~12807~~
4-23	Lucille Plummer 1526 es	79475 2036	5-25	III	11-25	500	12811
4-22	" " 1310	81394 1851	5-25	III	11-25	500	12812
4-23	Israel Rabinson 1317	79451 2036	8-11	"	11-25	5—	12820
4-22	" " 1301	81402 1851	8-11	"	11-25	5—	12819
4-22	Patricia ~~Priscilla~~ Stevens 1318	81395 1851	7-9	"	11-25	5—	12818
4-22	Paul Davis 1173	81536 1851	6-18		11-25	500	12824

13 jdts
9 - Natl
4 - Bliss—

Ox
ca clk
office
88-11
Sutphin
Blvd

date written

~~Pollack~~ 4-23-64 1851

NO, 422 722-2
" "

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Queens - CRIMINAL TERM.
....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

— against —

MOTION

THE STUYVESANT INSURANCE COMPANY
Surety,

— for —

Principal.
....X

PLEASE TAKE NOTICE, that upon the annexed affidavit of Jack Hunger duly sworn to the day of 19 , and the affidavit of c A (Def) or (Atty), duly sworn to the day of 19 , and the certificate of Clerk of Criminal Court dated the undersigned will move this court at ~~Special~~ CRIMINAL Term, Part 1. thereof, for the hearing of motion, to be held at the Courthouse, Supreme Court Building, 12501 Queens Blvd County of Q V, City and State of New York, on the day of 19 , at 9:30 in the forenoon of the same day, or as soon thereafter as counsel can be heard for an order remitting the forfeiture of the undertaking filed by The Stuyvesant Insurance Company, on behalf of the principal above named, and releasing The Stuyvesant Insurance Company from all obligations thereunder, and for such other and further relief as to the court may seem just and proper in the premises.

DATED; New York , 19 .

Yours, Etc.

~~AARON SLAVETSKY~~
Office and Post Office Address
~~914 Brook Avenue~~
County of Bronx
City and State of New York

To: O'CONNOR
District Attorney
Office and Post Office Address
136-05 Hoover Ave
County of
City and State of New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Q CT

X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

— against —

THE STUYVESANT INSURANCE COMPANY
Surety,

— for —

Principal.

X

STATE OF NEW YORK NY
COUNTY OF ss;

T - ay - , being duly sworn deposes and says,

THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent is fully familiar with the facts herein.

THAT heretofore, and on the day of 19 , The Stuyvesant Insurance Company, entered into a recognizance in the sum of DOLLARS, wherein was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of

THAT thereafter, on the day of 19 , the case was called in The Criminal Court, held in and for the county of Q , and the said principal not appearing the said recognizance was forfeited.

As will hereinafter be demonstrated, the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

As more fully appears from the annexed affidavit of def or atty , sworn to the day ot 19 , — -

Cert. of dd - etc

it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

A certificate of disposition of the case is annexed hereto and made a part hereof.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of ,

against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of DOLLARS,

in the office of the Clerk of Q ✓ County, entered on the day of

19 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and del — as principal,

upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Sworn to before me --

this day of 19

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

March 8, 1965

Mr. Carl Rachlin
165 West 46 Street
New York, New York

MAR 1 1 1965

Dear Carl:

I enclose herewith papers in regard to motions to remit bailbond forfeitures, which should be handled by someone in my absence. I tried very hard to get to this before leaving, but it now seems impossible. There is some urgency at this time.

Sincerely,

George Schiffer

March 16, 1965

Jules Zalon, Esq.
c/o Ashley Steiner Famous Artists, Inc.
555 Madison Avenue
New York, N.Y.

Dear Jules,

Thank you for agreeing to do the work and get the papers ready on the defaulted bonds matter.

As you could tell from the tone of my voice on the telephone, it came as a bit of a blow when I received a letter from George that this had not been attended to and he was going to Europe and the matter was urgent, since we have relied on you fellows to do this but, c'est la guerre! So long as this is taken care of.

Peace, Brother.

Sincerely,

Carl Rachlin
General Counsel

cc: George Schiffer, Esq.

CR:hdl

ELI SAUL COHN
ATTORNEY

332 EAST 149TH STREET
NEW YORK, N.Y. 10451

TELEPHONE 669-1212

COPY

March 16th, 1965

Mr. Albert Adkins
201 Clinton Avenue
Brooklyn, New York

Mr. Marshall Brown
84 Ravine Avenue
Yonkers, New York

Lane Perdue
National CORE
38 Park Row
New York, New York

The trial of your actions will take place sometime around April 15th, 1965.

I suggest that you contact me to arrange an appointment so that we might go over the testimony and prepare for trial.

Very truly yours,

Eli Saul Cohn
ELI SAUL COHN

ESC:hg

JULES D. ZALON
ATTORNEY AT LAW
7 EAST 85TH STREET
NEW YORK, N. Y. 10028
BUTTERFIELD 8-0202

MAR 23 1965

March 22, 1965

Carl Rachlin, Esq.
38 Park Row
New York, N.Y.

Dear Carl:

Regarding your letter dated March 16th, as I explained, I would be more than happy to help in anyway I can to facilitate the reinstatement of bail forfeitures ordered against our World's Fair defendants. However, I did not, as in fact I could not, take on the sole responsibility for prosecuting the motions in theSupreme Court, as my already taxed schedule militated against it.

As we discussed, the most important task now confronting us is actually getting to work on these motions, and I am in the process of personally writing to two of our Florida defendants, awaiting only certain information which is presently on Ben Brown's desk (date of forfeitures for Plummer and Roberson). We must also determine the whereabouts of all of our bail jumpers and determine the reason for their non-appearance. Once this is accomplished, we can then set to the task of drafting legally sufficient motions and affidavits therefor.

If you wish to assign the task of actually prosecuting the motions in the Supreme Court to any local attorney, I would be more than happy to cooperate to the fullest along with the volunteers working with Ben Brown.

With best personal regards,

Jules D. Zalon

JDZ/abg
cc: George Schiffer, Esq.

ELI SAUL COHN
ATTORNEY

332 EAST 149TH STREET
NEW YORK, N. Y. 10451

TELEPHONE 669-1212

April 13th, 1965

Miss Lane Purdue
National CORE
38 Park Row
New York, New York

Dear Miss Purdue:

On March 16, 1965, I wrote to you requesting you to contact me to arrange an appointment in preparation for trial. It is absolutely necessary that I discuss with you the facts of the case as quickly as possible.

Very truly yours,

Eli Saul Cohn

ELI SAUL COHN

ESC:hg

4/16 a.m. - Spoke to Cohn - Lane has called there & presumably will again in next few days. If not, he will call us & we'll try to locate her for him

H.-

AFA
ASHLEY FAMOUS AGENCY, INC.

April 20th, 1965

Carl Rachlin, Esq.
38 Park Row
New York, N.Y.

APR 21 1965

Dear Carl:

Pursuant to Steve Nagler's request, I am herewith sending you a copy of the letter I sent to Lucielle Plummer. As a foot note, she responded immediately explaining that she was now affiliated with the S.C.L.C. and gave Dr. King personally as a voucher.

The same letter was sent to Frank Roberson and I expect an immediate reply. As you might notice, this letter is drafted particularly for Lucielle Plummer. However, it might serve as a basic form and, of course, the most important thing is making initial contact after which time they will furnish us with any necessary information.

Anxiously awaiting the Lawson decision, I remain,

Yours For Freedom,

Jules D. Zalon

JDZ/abg
Encl.

1301 Avenue of the Americas • New York, N.Y. 10019 • Tele.: (212) 956-5800 • California • London • Paris • Rome

April 12th, 1965

Miss Lucielle Plummer
177 Palma Street
St. Augustine, Florida

Dear Miss Plummer:

To refresh your recollection, I am the attorney representing the persons arrested during the first day of the World's Fair last April 22nd. To further refresh your recollection, you are one of my defendants.

On May 25, 1964, you failed to appear at the Criminal Court for some reason. As a matter of form, the Court issued a Bench Warrant and forfeited your bail. I believe that we were in contact with you and you assured us you would appear when necessary. Although the case has still not been put down for trial (and we do not anticipate a trial at the moment,) we must immediately get the bail forfeiture rescindered. In order to do this, we need basic information, for example, where you were on that day; why you didn't appear; and persons who can vouch for the above.

Would you, therefore, kindly write me immediately explaining your reasons for not appearing and also someone who can vouch for this fact. As you can imagine, this is extremely important as there is a substantial amount of money riding on you at this time. Therefore, I urge you to reply promptly so that we may avoid embarrassment, financial and otherwise.

Sincerely,

Jules D. Zalon

JDZ/abg
cc: Dr. Richard Hayling

WESTERN UNION TELEGRAM (Night Letter)

PHONED IN Wednesday, April 21, 1965

URGENT YOU CONTACT THE UNDERSIGNED AT CORE OFFICE COrtland 7-6270

RE COURT DEFAULT

CARL RACHLIN

Sent to:

Danny Pollock
5208 Cabonne
St. Louis, Mo.

Gilbert Banks
319 Nostrand Ave.
Brooklyn

Marshall Brown
84 Ravine Avenue
Yonkers, N.Y.

Ronald Coy
142 MacDougal St.
New York, N.Y.

Patricia Stevens Due
540½ West Brevard St.
Tallahassee, Florida

Paul Davis
107-38 159th St.
Jamaica, N.Y.

ELI SAUL COHN
ATTORNEY

332 EAST 149TH STREET
NEW YORK, N.Y. 10451

TELEPHONE 669-1212

— Avery has address for Purdue

Undelivered ~~to~~
returned to CORE
Office 4/26/65

TN 7-6060
PE 6-8077
LO 4-5656
MO 2-5080
AL 4-5865

April 23rd, 1965

Miss Lane Purdue
National CORE
38 Park Row
New York, New York

Dear Miss Purdue:

Your case is on the calender in Queens Criminal Court, Part 2B, Kew Gardens, New York, on April 27th, 1965.

Please meet me there on that date at 9:30 a.m.

If you receive this letter before Monday, April 22nd, 1965, please call my office.

Very truly yours,

Eli Saul Cohn (hg)
ELI SAUL COHN

ESC:hg

Hil
EX 3-5581

The Stuyvesant Insurance Company

NEW YORK NEW YORK

ESTABLISHED 1850

N. Y. BOND DEPARTMENT

MICHAEL SHAPIRO, STATE AGENT
877 BROOK AVENUE
BRONX, N. Y. 10451
TEL.: MOtt HAVEN 5-3635

APR 26 1965

April 24th, 1965

CORE
38 Park Row
New York, New York.

Att: Mr. Carl Racklin.

Dear Sir:

After demand had been made upon Jack Meyer for the payment of the bail bond forfeitures, he referred me to you for demand for said bail bond forfeiture payments:

The following have been forfeited and demand is hereby being made for payment of same plus interest at the rate of six per Cent which is required by the Office of the District Attorney of Queens County:

1- Daniel Pollack
2- Melvin Owens (Two times)
3-Gilbert Banks
4-Marshall Brown (Two times)
5- Ronald Coy
6- Paul Davis
7- Lucille Plummer (Two times)
8- Frank Roberson (Two times)
9-Priscilla Stevens aka Patrick Stevens.

The total amount due is Six Thousand Five Hundred Dollars plus Three Hundred Ninety Dollars ineterst , making a total of Six Thousand Eight Hundred Ninety Dollars now due.

Please remit immediately upon the receipt of this letter.

Respectfully yours,

The Stuyvesant Insurance Company

Michael Shapiro
State Agent.

MS/oa
Cert Mail
Ret Rec Req

2nd. *Our Century of Service*

Returned undelivered
to CORE office 4/26/65

Office of the
District Attorney
of Queens County
QUEENS CRIMINAL COURT BUILDING
126-05 HOOVER AVENUE
KEW GARDENS, JAMAICA, N. Y. 11415

FRANK D. O'CONNOR
DISTRICT ATTORNEY

ADDRESS YOUR REPLY TO THE
DISTRICT ATTORNEY, ATTENTION
OF MR. **Det. J.Maillard**

Lane Perdue
National Core Headquarters

The cases previously removed to the Federal Courts has been returned back to this jurisdiction.

You are therefore directed to report to the Criminal Court, City of New York Queens County, Part 2B on Tuesday, April 27th, 1965 at 9:30 A.M. o'Clock in the forenoon of that day, as a defendant in a criminal action prosecuted by the People of the State of New York.

JOSEPH M. WISE
Assistant District Attorney
Chief, Youth Bureau

By: Det James H. Maillard

4/11-12/65

where are all people who have forfeited

Robinson
Plummer } Jalen

Check w/ rounds up & get the reason they were absent

Hanne
Speak to me about this
Ask Jalen to give you
a form letter to send
to all the people who
should receive this
Time & Presence

Yes

Dr. Richard Hayling
79 Bridge St
St. Augustine, Fla.

(305) 829-3126

MSS SEDFRE

Historical Society of Wisconsin

State of New York vs Epstein, Howard, Nov. 1964

Please Retain Original Order

Box 40
Folder 13

CRIMINAL COURT OF THE CITY OF NEW YORK
BOROUGH OF QUEENS : SECOND JUDICIAL DISTRICT
---x

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

HOWARD EPSTEIN,

Defendant.

---x

NOTICE OF APPEAL

RECEIVED
DISTRICT ATTORNEY QUEENS COUNTY
1964 NOV 2 :56

DISTRICT ATTORNEY

SIRS:

PLEASE TAKE NOTICE that the defendant above named appeals to the Appellate Term of the Supreme Court, Second Department, from the judgment convicting him of the offense of disorderly conduct, rendered in this Court by Honorable IRVING I. SCHRECKINGER of the Criminal Court of the City of New York, on the 19th day of November, 1964, sentence being a suspended sentence, being imposed on the 19th day of November, 1964; and for each and every part thereof.

PLEASE TAKE FURTHER NOTICE that the grounds of this appeal are that the said judgment is contrary to law and against the weight of evidence.

Dated: November 23, 1964
New Gardens
Queens County, New York

RALPH PERLBERGER, ESQ.
15 Park Row
NewwYork, New York

CARL RACHLIN, ESQ.
38 Park Row
New York, New York

GEORGE SCHIFFER, ESQ.
40 East 49th Street
New York, New York

JULES D. ZALON, ESQ.
7 East 85th Street
New York, New York

CRIMINAL COURT OF THE CITY OF NEW YORK
BOROUGH OF QUEENS: SECOND JUDICIAL DEPARTMENT

- -x

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

HOWARD EPSTEIN,
Defendant.

- -x

SIRS:

PLEASE TAKE NOTICE that the defendant above named appeals to the Appellate Term of the Supreme Court, Second Department, from the judgment convicting him of the crime of Resisting a Public Officer in the Discharge of his Duty, rendered in this Court, Part II-B thereof, on the 16th day of December, 1964, sentence being suspended; and from each and every part thereof.

PLEASE TAKE FURTHER NOTICE that the grounds of this appeal are that the said judgment is contrary to law and against the weight of evidence.

Dated: December 28, 1964
Kew Gardens
Queens County
New York

Ralph Perlberger, Esq.
15 Park Row
New York, N.Y.

Carl Rachlin, Esq.
38 Park Row
New York, N.Y.

George Schiffer, Esq.
40 East 49th Street
New York, N.Y.

Jules D. Zalon, Esq.
7 East 85th Street
New York, N.Y

CRIMINAL COURT OF THE CITY OF NEW YORK
BOROUGH OF QUEENS : SECOND JUDICIAL DISTRICT

---x

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

FRANKLIN ANDERSON,

Defendant.

---x

SIRS:

PLEASE TAKE NOTICE that the defendant above named appeals to the Appellate Term of the Supreme Court, Second Department, from the judgment convicting him of the offense of disorderly conduct, rendered in this Court by Honorable MANUEL A. GOMEZ of the Criminal Court of the City of New York, on the 26th day of August, 1964, sentence being a fine of twenty-five ($25.00) dollars, sentence imposed on the 7th day of October, 1964, and from each and every part thereof.

PLEASE TAKE FURTHER NOTICE that the grounds of this appeal are that the said judgment is contrary to law and against the weight of evidence.

Dated: October 27, 1964
Kew Gardens
Queens County
New York

Morton Friedman, Esq.
112-10 Farmers Blvd.
St. Albans, Queens

Carl Rachlin, Esq.
38 Park Row,
New York, N.Y.

George Schiffer, Esq.
40 East, 49th Street,
New York, N.Y.

Jules D. Zalon, Esq.,
7 East, 85th Street
New York, N.Y.

State of New York vs Flesch, Walter & Gore, Robert August, 1963

Box 4
Folder 14

orical Society of Wisconsin

Please Retain Original Order

Form 250—20M-116017(63) 447

Criminal Court of the City of New York

PART 1B, **COUNTY OF** New York

STATE OF NEW YORK
COUNTY OF New York } ss.:

Robert Bantum

of No. 652 Shady St Hempdtead, County of Nassau

City of New York, being duly sworn, deposes and says that on July 11, 1963, at about 11.51 A M.,

at Rutgers housing project (Rutgers & Monroe St) of N.Y. State of New York,

the defendant, Robert Gora did commit the crime of:

unlawfully intruding on the real property of another in violation of 2036 of the Penal Law of the state of N.Y.

under the following circumstances:

Deponent states that at the time and loction aforementioned the defendant did lie on his back across the entrance to the aforesaid premises obstructing the entrance to the project and stopping a truck that was about to enter the project.

Attached is an affidavit of corroboration by Ptl William J Kaminski and Ptl Alexander R Morrison who state that they requested the defendant on several occasions to move and he refused to do so.

I hereby certify that the within is a true Copy of the Record on file at this Court

New York OCT 13 1966 19

Carlotta Rossella
Sr. Court Clerk

Court Clerk

Sworn to before me,

July 11, 19 63

Judge, Criminal Court of the City of New York

Pending Leaves
(see R. & P 14/26.0) Vacation Other Leave:

CERTIFIED COPY OF COMPLAINT, UNLAWFUL INTRUSION - GORE

Form 250—20M-116017(63) 447

Criminal Court of the City of New York

PART [illegible], COUNTY OF New York

STATE OF NEW YORK
COUNTY OF New York } ss.:

Robert [illegible]

of No. 652 Shady St Hempstead, County of Nassau

City of New York, being duly sworn, deposes and says that on July 11, 1963, at about 11.51 A M., at Rutgers housing project (Rutgers & Monroe St's) in the County of N.Y. State of New York, the defendant, Walter Flesch did commit the crime of:

unlawfully intruding on the real property of another in violation of 2036 of the Penal Law of the state of N.Y.

under the following circumstances:

Depenent states that at the time and location aforementioned the defendant did lie on his back across the entrance to the aforesaid premises obstructing the entrance to the project and stopping a truck that was about to enter the project.

Attached is an affidavit of corroboration by Ptl William J Kaminski and Ptl Alexander R Morrison who state that they requested the defendant on several occasions to move and he refused to do so.

I hereby certify that the within is a true
Copy of the Record on file at this Court
OCT 13 1966
Carlotta Rossella
Sr. Court Clerk
New York 19
Court Clerk

Sworn to before me,

July 11, 1963

Judge, Criminal Court of the City of New York

Pending Leaves
(see R & P. 14/26.0) Vacation.................. Other Leave:..................

CERTIFIED COPY OF COMPLAINT, UNLAWFUL INTRUSION - FLESCH

Form 11—20M-116017(63) 447 **DISORDERLY CONDUCT**

Criminal Court of the City of New York

Part 1B, **County of** New York

CITY OF NEW YORK
COUNTY OF New York } ss.:

Robert Bantum .653 Shady St Hempstead L.I being duly sworn, says that at 11.51 AM on July 11, 1963, at Monroe and Rutgers St's entrance to Rutgers housing project County of N.Y., City and State of New York the defendant

Robert Gore

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did lie on the entrance to the aforrsaid construction site stopping a truck that was trying to make a dalivery of concrete. His actions caused a crowd of about two hundered to assemble which obstructed the sidewalks and the roadway. Attached are affidavits of corroboration by Ptl Alexander R Morrison 16 Pct and William J Kaminski 1 Pct who states that the defendant refused to move when requested to do so by them on several occasions.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

July 11, 1963

Judge.

Pending leaves: (see R & P 14/26.0)

Vacation

Other Leave:

I hereby certify that the within is a true Copy of the Record on file at this Court

OCT 13 1966

New York 19

[illegible] Rossella
Sr. Court Clerk

Form 7—40M 702794 447

AFFIDAVIT—CORROBORATION

Criminal Court of the City of New York

Part 1B, **County of** New York

CITY OF NEW YORK }
COUNTY OF New York } ss.:

Ptl William J Kaminski

of No. First Pct

in the County of New York City of New York

being duly sworn, says that he has read the annexed affidavit of

Robert Bantum

and that the facts therein stated to be on information furnished by deponent are true of deponent's own knowledge.

Sworn to before me
July 11, 1963

Judge

Ptl William J Kaminski

Pending Leaves (see R & P 14/26.0)
Vacation
Other Leave:

I hereby certify that the within is a true Copy of the Record on file at this Court
OCT 13 1966

I hereby certify
Copy of the Record on file at this Court
Carlotta Rossella
New York OCT 13 1966 19 Sr. Court Clerk
Court Clerk

Form 11—20M-116017(63) 447

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, **County of** New York

CITY OF NEW YORK
COUNTY OF New York } ss.:

Robert Bantum 652 Shady St Hempstead L.I being duly sworn, says that at 11.51 AM on July 11, 19 63, at Monroe and Rutgers St's entrance to Rutgers housing project in the County of N.Y., City and State of New York the defendant Walter Flexch

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did lie on the entrance to the aforrsaid construction site stopping a truck that was trying to make a delivery of concrete. His actions caused a crowd of about two hundered to assemble which obstructed the sidewalks and the roadway. Attached are affidavits of corroboration by Ptl Alexander R Morrison 16 Pct and William J Kaminski 1 Pct who states that the defendant refused to move when requested to do so by them on several occasions.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

July 11, 1963

Judge.

Pending leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 7—40M 702794 447

AFFIDAVIT—CORROBORATION

Criminal Court of the City of New York

Part 1B, **County of** New York

CITY OF NEW YORK
COUNTY OF New York } ss.:

Ptl Alexander R Morrison

of No. 15 Pct

in the County of New York City of New York

being duly sworn, says that he has read the annexed affidavit of

Robert Bantum

and that the facts therein stated to be on information furnished by deponent are true of deponent's own knowledge.

Sworn to before me
July 11, 1963

Judge

Alexander R Morrison

Pending Leaves (see R & P 14/26.0)
Vacation 9/26/63 - 10/20/63 6th Sq.
Other Leave:

I hereby certify that the within is a true
Copy of the Record on file at this Court
New York OCT 1 6 1966 19
[illegible] Rosella
Sr. Court Clerk
Court Clerk

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SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM
---X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants.
---X

STATEMENT UNDER RULE 5531 CPLR

This is an appeal from a judgment convicting defendants-appellants from complaints charging violation of section 722 and 2036 of the Penal Law of the State of New York.

1. The above entitled action, Criminal Court of the City of New York, County of New York, Index Numbers B5391, B5390, C11550, and C11549.

2. The parties below were the People of the State of New York and Robert Gore and Walter Flesch.

3. The case was commenced and tried in the Criminal Court of the City of New York, Part 2D, New York County.

4. The defendants were each arrested for disorderly conduct under section 722(3) of the Penal Law and unlawful intrusion under section 2036 of the Penal Law on July 11, 1963.

5. The defendants were brought to trial on July 24, 1963.

6. The defendants were each charged with blocking a concrete mixer truck and lying across the entrance to the Rutgers Housing Project at Monroe and Rutgers Street, New York, New York. The defendants pleaded not guilty and were found guilty on each count after trial. The sentence passed on each was sixty (60) days imprisonment on the disorderly conduct charge and sixty (60) days imprisonment on the unlawful intrusion charge. The sentences in each case, as far as each defendant was concerned, was to run concurrently with each other. Sentences were rendered, after trial, on July 26, 1963.

7. This is an appeal from the judgments of conviction on the unlawful intrusion charge and from the sentences of the trial court on the ground that the sentence was excessive.

8. The appendix method is not being followed.

ROBERT B. SAGINAW, Esq.
Attorney for Defendants-Appellants

SUPREME COURT OF THE STATE OF NEW YORK

FIRST DEPARTMENT: APPELLATE TERM

--X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants.

--X

STATEMENT PURSUANT TO RULE II (2)(c)

Neither defendant served any time.

Neither defendant paid any fine.

Each defendant received sixty (60) days on the disorderly conduct charge and sixty (60) days on the unlawful intrusion charge. The sentences, as far as each defendant was concerned, were to run concurrently.

Bail was imposed in the sum of one ($1.00) dollar for each defendant pursuant to a Certificate of Reasonable Doubt, dated July 26, 1963, and signed by Supreme Court Justice George Postel

ROBERT B. SAGINAW, Esq.
Attorney for Defendants-Appellants

CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK
-------------------------------------X

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants.
-------------------------------------X

NOTICE OF APPEAL

85390
85391
C11548
C11550

SIR:

PLEASE TAKE NOTICE that defendants, ROBERT GORE and WALTER FLESCH, hereby appeal to the Appellate Division of the Supreme Court, First Judicial Department, from a judgment of conviction of the Criminal Court of the City of New York, County of New York, rendered on the 26th day of July, 1963, convicting the said defendants of the offense of Disorderly Conduct (S.722 (2) Penal Law) and misdemeanor of Unlawful Intrusion on Real Property (S.2036 Penal Law) and from each and every part thereof and from each and every intermediate order therein made.

Dated: New York, New York
July 26, 1963

Yours, etc.
SHIRLEY FINGERHOOD
Attorney for Defendants
Office & P.O. Address
1270 Avenue of the Americas
New York, New York

To:
HON. FRANK S. HOGAN
District Attorney of New York County
Clerk of the Criminal Court of the City of New York
County of New York

CERTIFIED COPY OF COMPLAINT, DISORDERLY CONDUCT - GORE

CERTIFIED COPY OF COMPLAINT, DISORDERLY CONDUCT - FLESCH

CERTIFIED COPY OF COMPLAINT, UNLAWFUL INTRUSION - GORE

CERTIFIED COPY OF COMPLAINT, UNLAWFUL INTRUSION - FLESCH

DEFENDANT GORE'S CRIMINAL RECORD

DEFENDANT FLESCH'S CRIMINAL RECORD

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM
--------------------------------------X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants.
--------------------------------------X

AFFIDAVIT OF NO OPINION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

ROBERT B. SAGINAW, BEING DULY SWORN, DEPOSES AND SAYS that he is the attorney for the Appellants herein.

No opinion in writing was handed down by the court below.

ROBERT B. SAGINAW

Sworn to before me this

of October, 1966.

CERTIFICATION BY ATTORNEY

Pursuant to section 458 of the Code of Criminal Procedure and section 2105 of the Civil Practice Law and Rules, the undersigned attorney for the defendants hereby certifies that the foregoing record on appeal contains a copy of the Notice of Appeal, the Complaints, the Minutes of the Trial, the Minutes of the Sentencing, and that said record, except for the Minutes of the Trial and Sentencing, has been compared by me with the originals and it is a true and correct copy of the transcript of the whole of such originals.

Dated: October 24, 1966

ROBERT B. SAGINAW
Attorney for Appellant

ORDER SETTLING CASE

The foregoing cases on appeal, containing all the evidence is hereby settled and ordered on file.

Dated:

JUDGE, Criminal Court of the
City of New York

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK
---X

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants,

---X

CLERK'S RETURN ON APPEAL

I, the undersigned, Clerk of the above-named Court, respectfully make return to the Appellate Term of the Supreme Court for the First Judicial Department and certify upon the affidavit of the appellants' attorney that there are hereto attached correct copies of the Notice of Appeal and of all papers required to be returned pursuant to the Criminal Court Act of the City of New York and the Rules and Regulations of the Appellate Term of the Supreme Court for the First Judicial Department.

In Witness Whereof, I have hereunto set my hand affixed the seal of the above-named Court this__________ day of

______________________ 1966.

____

CLERK

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM

---X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants,

---X

IT IS HEREBY STIPULATED AND AGREED by and between the attorney for the defendants-appellants and the District Attorney that the appeal in the above-entitled action shall be limited to the proceedings had on trial and sentence, and it is

FURTHER STIPULATED AND AGREED that the arraignment and/or adjournment minutes need not be reproduced since no error is assigned with respect to either or both, and that any question with respect thereto is waived. In the event the District Attorney deems it necessary, the arraignment and/or any adjournment minutes shall be included in the record, and it is

FURTHER STIPULATED AND AGREED that the exhibits, if any, need not be part of the record, but that the originals will be submitted to the appellate court on or before the call of the calendar.

____
Attorney for the Appellants

Dated: ______________________________
District Attorney

CRIMINAL COURT OF THE CITY OF NEW YORK

Part 2A NEW YORK COUNTY

THE PEOPLE OF THE STATE OF NEW YORK	
-against-	Docket No.B5390, C11549 B5391, C11550
ROBERT GORE, WALTER FLESCH,	Charge: 722, Subd.2 and 2036 of the Penal Law.
Defendants	
	July 26, 1963 100 Centre Street New York 13, N.Y.

BEFORE:

HON. T. VINCENT QUINN
Judge, Criminal Court
City of New York

APPEARANCES:

Robert J. Lehner
Assistant District Attorney
For the People

Miss Shirley Fingergood
1270 Avenue of the Americas
New York 20, New York
For the Defendants

Max Diamond
Court Officer

Thomas J. Landers, CSR
Official Court Reporter

Transcribed by: Peter J. Galati, CSR
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A : COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK - against - ROBERT GORE and WALTER FLESCH, Defendants.	Docket No. B5390, C11549, B5391, C11550 Charge: 722, Subdivision 2, and 2036 of the Penal Law

July 26, 1963
100 Centre Street
New York 13, N. Y.

BEFORE: HON. T. VINCENT QUINN
Judge

APPEARANCES: FOR THE PEOPLE
ROBERT J. LEHNER, ESQ.
Assistant District Attorney

FOR THE DEFENDANT
MISS SHIRLEY FINGERGOOD
1270 Avenue of theAmericas
New York 20, New York

COURT OFFICER
Max Diamond

Thomas J. Landers, C.S.R.
Official Court Reporter

COURT OFFICER: Docket No. B5390 and C11549, Robert Gore, and Docket No. B5391, and C11550, Walter Flesch, for sentence, your Honor. Counsel, state your appearance for the record.

MISS FINGERGOOD: Shirley Fingergood, 1270 Avenue of the Americas, for the defendants.

THE COURT: I assume you want to make a formal motion?

MISS FINGERGOOD: Yes, sir, I do.

I move to arrest the judgment on the ground that this Court did not have jurisdiction over these defendants on the information which was filed against them in that the information lacked essential allegations of fact that these people intruded on a plot of land within the statute, and that it lacked the essential allegation that these acts were without the authority of the owners.

THE COURT: All right. I've read your memorandum. Motion is denied in each case.

MISS FINGERGOOD: Thank you, sir.

I also, at this time, would like to

review the other motions I made on the trial.

THE COURT: Motions are denied. Now, are the defendants ready for sentence?

MISS FINGERGOOD: Yes, they are.

THE COURT: Is there any other legal cause before I impose sentence?

MISS FINGERGOOD: Aside from the fact that I don't think that this Court had jurisdiction, no.

THE COURT: What do the defendants or you want to say on their behalf before sentence is imposed? I assume you want to make the same statement with regard to both cases?

MISS FINGERGOOD: I would like to make --

THE COURT: Both defendants.

MISS FINGERGOOD: I would like to make a short statement, and Mr. Gore would like to make a statement.

THE COURT: All right.

MISS FINGERGOOD: I would like to ask your Honor that you, in sentencing, consider the fact that, although both a misdemeanor and an offense are charged, the acts under those are the same, and that the acts which -- or the disorderly conduct, are generally punishable on a first offense by a suspended sentence or a fine. In the years which I have practiced law, I have never seen a first offender get a jail sentence which was not suspended.

Accordingly, I believe that, if you sentence these men to jail, you will be doing so on the ground that their activities were protests against discrimination and that they are workers in the Civil Rights movement.

THE COURT: I don't understand it. I understand that, on the evidence that these defendants deliberately and intentionally committed acts of disorderly conduct. All right, proceed.

MISS FINGERGOOD: Your Honor, as I said, I believe that that would be a most unusual sentence in these cases. There is inherent in your verdict a finding that their acts were intentional acts of disorderly conduct, but that is inherent in any conviction under 722 and in the cases in which I have represented defendants who have been committed under 722, and also in those which I know about because lawyers I know have represented -- I have never heard of a first offender being given a jail sentence which was not suspended.

THE COURT: All right. Yes, Mr. Gore?

MR. GORE: It would be presumptuous of me to pretend to know more about history than the Court, or to try to apprise the Court of any parts of our national history. At the same time, however, I feel compelled to point out several things which have a direct bearing on my conviction of disorderly conduct and intrusion on property. This is not intended as a defense -- Miss Fingergood has already done an able job at that. It is merely an explanation of the reasons why my actions were taken.

There is no secret about the fact that discrimination exists in New York City. It exists at every level of life here -- in housing, in employment, in schools, in political participation and every other area. We have laws here which preclude such discrimination, yet it exists, and blatantly. What is the average citizen to do about this? We have been told to take our case to the Courts. Case after case has been taken to Court at great expense and at great personal cost, but the rotten core of discriminating patterns of life here has not been reached.

We have been asked to wait. One hundred years after the so-called Emancipation Proclamation, are people serious when they ask us to wait longer? What most people mean when they say, "Wait a little longer", is "Don't bother me at all." Unless we are able to make people understand quite forcefully that we want freedom now, all of the pronouncements from the Declaration of Independence to present day utterances are worthless.

Many people have inferred that we are taking the law into our own hands. To a degree, this is true. However, we are not trying to subvert the law. I, for one, have the highest regard for the law. It is because of this high regard for the law that I was impelled to uphold it when the Governor and the Mayor did not do so. It is of utmost importance that people understand the difference between my laying in front of a truck to halt construction at Rutgers Street because of discriminatory hiring patterns, and the pickpocket or bank robber who tries his best to escape the law. I did not run away from the scene of my alleged crime. I remained there knowing full well that there was a possibility of arrest. I stand here now knowing that I may have to spend considerable time in jail. This is not an easy decision to make. It is a very agonizing decision. I do not want to go to jail. I have been in jails before for similar activities, and I know that jail is very degrading, uncomfortable and dehumanizing.

At the same time, however, one must make choices between evils. It is a fact of American life at present that the evil of racial discrimination has impaired the lives of millions of citizens, both black and white. At this moment in history, I am not prepared to play any role in the continuation of this tragic drama. What, then, can I do -- or must I do? The only way of redress open to me is to confront the city, the state and the nation with my body, and attempt by so doing to scream out to every individual in this land that I love, "Succor me, help me to help America become the bastion of democracy which it says that it is!" No, I don't want to go to jail, but neither do I want to see discrimination because of race, color, creed or national origin continued. So, then, I must make a choice.

My choice has been made. I have been convicted of a crime, and perhaps I will go to jail as a result of this choice. If I do go to jail, it will be with great trepidation. I must, however, make this difficult choice: It is better to be in jail for dramatizing the very principles upon which this great nation was founded than to be outside and be silent.

MISS FINGERGOOD: Your Honor, I have a

character witness. This is Reverend Paul Lawrence.

REV. LAWRENCE: I would just like to testify in behalf of the two defendants; knowing them through their Protestant minister, I know they are certainly of good character. The means they employ in order to address their grievances are certainly sound and have never, to my knowledge, used any means which would warrant the sentence which is now considered as just for the infraction of the statute in question. I think that it is quite evident from merely the news reports that people connected with CORE or the Students of the Non-Violent Co-ordinating Committee have never employed any means which would warrant such a sentence, especially since the lawyer mentioned it is only their first time. There is no question as far as being sentenced, that the sentence should be so stiff. It seems to me to be rather unjust.

THE COURT: Well, usually, in connection with defendants who have been convicted of disorderly conduct, or any violation of law, there is a feeling of remorse; any statement that they do not intend to violate the law again.

I find no such statement from either of these defendants.

REV. LAWRENCE: I think Mr. Gore's statement just now indicates his respect for the law.

THE COURT: Oh, yes. It indicates a respect for the law, but on the other hand, I find no remorse whatsoever for having committed this act nor any statement by either Mr. Gore or Mr. Flesch that they would not again violate the law if they felt it was necessary to establish this principle. And that's the difference between this case and the other case of disorderly conduct which Miss Fingergood made mention of.

MISS FINGERGOOD: Your Honor, in view of your statement as to that, may I ask that we get a Probation Report on these men to show their character because I really do not think that, in our system of jurisprudence, one's intention to act is to be considered in this context. I know that I have represented people who have said that they would never violate the law again, and sometimes they're back for the seventh or the eighth or the tenth time. One's present intention is not, I think, relevant to the sentence; it's one's history, one's character, and, I think, if we got a Probation Report on this, you would be in a better position to make a decision.

THE COURT: That application is denied.

On Docket 5390 and 5391, each of the defendants is committed to the City Prison or Workhouse for a period of 60 days. On Dockets 11549 and 11550, each of the defendants is committed to the City Prison or Workhouse for a period of 60 days. The sentences in each case, as far as each defendant is concerned, are to run concurrently with each other.

MISS FINGERGOOD: Your Honor, I move for a stay of execution for the purposes of perfecting an appeal.

THE COURT: Application is denied.

* * *

The above is a correct transcript of
the minutes taken at this sentencing.

Thomas J. Landers

Thomas J. Landers, C.S.R.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2-D : : BOROUGH OF MANHATTAN

- X

THE PEOPLE OF THE STATE OF NEW YORK : Docket #B-5391
B-5390

-on the complaint of- :

PTL. ALEXANDER MORRISON : Charge: Violation of 2036 of the Penal Law

-vs- :

WALTER FLESCH and ROBERT GORE, :

Defendants. : TRIAL

- X

THE PEOPLE OF THE STATE OF NEW YORK :

-on the complaint of- : Docket #C-11550
C-11549

PTL. WILLIAM J. KAMINSKI : Charge: Violation of 722, Subd. 2

-vs- :

WALTER FLESCH and ROBERT GORE, :

Defendants. : TRIAL

- X

100 Centre Street
New York 13, New York
July 24, 1963

BEFORE:

HON. T. VINCENT QUINN
Justice

(cont'd)

APPEARANCES:

For the People:

ROBERT J. LEHNER, ESQ.
Assistant District Attorney
155 Leonard Street
New York 13, New York

For the Defendants:

SHIRLEY FINGERHOOD, ESQ.
1270 Avenue of the Americas
New York 20, New York

GERALD SPIELBERG
and
NEIL SULLIVAN
Court Officers

CAROL M. WRIGHT
Official Court Reporter

****

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****

EXHIBITS

For the People:

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2 for Ident	Copy of Blueprint of Plan for Rutgers Housing Project	16
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****

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THE BRIDGEMAN: Dockets B-5391, Walter Flesch, charged with violation of 2036 of the Penal Law, and Disorderly Conduct, Subdivision 2; arresting officer A. Morrison, 16th Precinct.

THE COURT: Is the officer here?

THE BRIDGEMAN: Yes, your Honor.

THE COURT: Walter Flesch?

THE BRIDGEMAN: Outside.

THE DISTRICT ATTORNEY: May we have a second call. I believe the people just stepped outside.

DEFENSE COUNSEL: May I ask for substitution of attorneys? I am representing Mr. Flesch.

THE COURT: What is your name?

DEFENSE COUNSEL: Shirley Fingerhood, 1270 Sixth Avenue.

THE COURT: Ready?

MISS FINGERHOOD: Yes.

THE DISTRICT ATTORNEY: The People are ready. May we have it marked ready?

THE COURT: Marked Ready.

THE BRIDGEMAN: Dockets #B-5390 and #C-11549, Robert Gore; arresting officer W. Kaminski, charged with violation of 2036 of the Penal Law and Disorderly Conduct, Subdivision 2. State your appearance, Counsel.

DEFENSE COUNSEL: Shirley Fingerhood, 1260 Sixth Avenue.

THE COURT: Ready on these?

MISS FINGERHOOD: Yes.

THE COURT: Marked Ready.

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THE BRIDGEMAN: Recalling Dockets #C-11549, Robert Gore, and #B-5390, Robert Gore, charged with violation of 2036 of the Penal Law, and Disorderly Conduct 2. Counselor, would you state your notice of appearance?

DEFENSE COUNSEL: Shirley Fingerhood, 1270 Sixth Avenue, appearing for Mr. Gore.

/ THE BRIDGEMAN: The defendant pleads--

MISS FINGERHOOD: Not Guilty.

THE BRIDGEMAN: Dockets #C-11550, Walter Flesch, charged with Disorderly Conduct, Subdivision 2, and B-5391, same defendant,

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charged with violation of 2036 of the Penal Law. Counsel?

MISS FINGERHOOD: Same counselor representing Mr. Flesch.

THE COURT: This 2036 is a Misdemeanor and the defendants have a right to a trial before a panel of three judges.

MISS FINGERHOOD: We waive that right.

THE COURT: Do you waive preliminary hearing?

MISS FINGERHOOD: Yes.

THE COURT: The defendant Robert Gore pleads Not Guilty?

MISS FINGERHOOD: Yes.

THE COURT: Are you ready for trial or do you seek an adjournment?

MISS FINGERHOOD: Ready for trial.

THE COURT: All right. Now, with regard to the Disorderly Conduct on Robert Gore, how does the defendant plead?

MISS FINGERHOOD: Not Guilty.

THE COURT: Now, the defendant Walter Flesch: The 2036 of the Penal Law, as I stated before, is a Misdemeanor and he has a right to a trial before a panel of three judges.

MISS FINGERHOOD: He waives that right.

THE COURT: And does he waive the preliminary hearing?

MISS FINGERHOOD: Yes, he does.

THE COURT: And what is the defendant's plea?

MISS FINGERHOOD: Not Guilty.

THE COURT: Is the defendant ready for trial?

MISS FINGERHOOD: Yes, he is.

THE COURT: Now, on the Disorderly Conduct, does the defendant plead Guilty or Not Guilty?

MISS FINGERHOOD: Not Guilty.

THE COURT: And is he ready for trial?

MISS FINGERHOOD: Yes, he is.

THE COURT: All right. Now, is there any application on the part of the People in these cases?

THE DISTRICT ATTORNEY: Yes, your Honor. I ask that the four cases, the two

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2036 charges and the two 722, Subdivision 2, charges, be tried together as to these two defendants with separate verdicts rendered to each, without the necessity of reswearing witnesses, and with separate verdicts as to each charge.

THE COURT: That the 2036s and the 722s be tried together?

THE DISTRICT ATTORNEY: Yes, all four charges be tried together with separate verdicts as to each defendant on each charge.

THE COURT: Is that satisfactory with the defendants?

MISS FINGERHOOD: Yes.

THE DISTRICT ATTORNEY: People ready for trial and People call to the stand Harold Klorfein.

THE BRIDGEMAN: Step up, face the Judge, raise your right hand.

HAROLD KLORFEIN, called to the stand as a witness on behalf of the People, upon first being duly sworn by the Court, testified as follows:

THE BRIDGEMAN: Be seated. Now, what is your name?

THE WITNESS: Harold Klorfein.

THE BRIDGEMAN: Where do you live?

THE WITNESS: Eleven Stuyvesant Oval, New York City.

THE BRIDGEMAN: Business or occupation?

THE WITNESS: Secretary of the New York City Housing Authority.

THE COURT: May I have this witness' name?

THE WITNESS: Klorfein, K-L-O-R-F-E-I-N, Harold.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Mr. Klorfein, how long have you been secretary of the New York City Housing Authority?

A Approximately thirteen years.

Q On July 11, 1963, were you secretary of the New York City Housing Authority? Sec.

A Yes.

Q And are you familiar with the Rutgers Housing project in New York County?

A I didn't hear the question.

Q Are you familiar with the Rutgers Housing project in New York County?

A In a general way, yes. gen way

Q Do you know where it is located?

A Yes.

Q Where is it located, sir?

A It is located between Madison and Cherry Streets and Pike and Rutgers.

Q And do you know who owns the property between those streets? bet streets

A The New York City Housing Authority. NYCHA own prop

Q And are you an officer of the New York Housing Authority?

A Yes.

Q On any date did you give each of these defendants, Mr. Flesch or Mr. Gore, permission to enter the construction site at the Rutgers Housing site?

MISS FINGERHOOD: I object to the question, your Honor. It is not within the Information. The Information does not charge that they were not given permission. info doesn't chg not given permission

THE COURT: Well, it does charge that

they unlawfully intruded.

MISS FINGERHOOD: I know, but under the statute he is trying to prove they were not given authority which is a specific allegation.

THE COURT: The objection is overruled.

MISS FINGERHOOD: Exception.

THE COURT: Answer the question.

THE WITNESS: The answer is No. no admission

Q Of your knowledge, did any officer of the New York City Housing Authority give permission to either of these defendants to enter the project site, the Rutgers Housing site, on July 11, 1963?

A To my knowledge, none did.

THE DISTRICT ATTORNEY: You may inquire.

MISS FINGERHOOD: No questions.

THE COURT: You may step down.

THE DISTRICT ATTORNEY: Mr. Cokeley, please.

THE BRIDGEMAN: Face the Judge and raise your right hand.

HARRY COKELEY, called to the stand as a

witness on behalf of the People, upon first being duly sworn by the Court, testified as follows:

THE BRIDGEMAN: State your name, address, business or occupation.

THE WITNESS: Harry Cokeley, 11 Brookview Boulevard, Spring Valley, New York; I am a Construction Superintendent for the New York City Housing Authority.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Sir, where are you presently assigned as a Construction Superintendent?

A The Rutgers Housing project.

Q And is that in the County of New York?

A Yes.

Q And on July 11, 1963, where were you assigned?

A At the Rutgers Housing project.

Q As Superintendent of Construction, what are your duties?

A To supervise the coordination of constructors engaged in the construction of a five-building housing project and supervise the inspection and enforcement of the specifications and plans.

Q Now, are you familiar with the fence guarding the construction site on the Rutgers site?

A Yes, sir.

Q And are you familiar with the property line on Rutgers Street which separates the project from the public thoroughfare?

A Yes.

Q And are you familiar with where, in relation to the property line, is the fence guarding the Rutgers project on Rutgers Street?

fence

A The fence is located two feet beyond the -- two feet inside the property line, parallel with the property.

2 ft diff

Q In other words, there is a two-foot space after reaching the property line from the thoroughfare, before you get to the fence?

A Yes.

THE DISTRICT ATTORNEY: I ask that this slip of paper be marked for identification, People's One.

THE COURT: Is that two feet from

the building line?

THE DISTRICT ATTORNEY: From the property line.

(Marked People's Exhibit 1 for Identification by Court Officer)

BY THE DISTRICT ATTORNEY: (cont'g)

Q I show you the slip of paper, People's Exhibit 1 for Identification and ask you what is it?

A This is a sketch taken out of the specification book for this project. It indicates the location of the project's fence in relation to the property line.

Q And are you familiar with the entire construction area?

A Yes.

Q Is this an accurate representation of the construction area of the Rutgers Housing project?

A It is.

THE DISTRICT ATTORNEY: I offer People's Exhibit 1 for Identification in evidence.

MISS FINGERHOOD: I object, your Honor. There is no scale on this and Mr. Lehner is asking about scale on the basis of this.

THE COURT: I beg your pardon?

MISS FINGERHOOD: I don't see any scale on this.

(Conference between District Attorney and Defense Attorney)

THE COURT: Do you know who prepared this map?

THE WITNESS: No, I don't. Do you mean the sketch or the specifications?

THE COURT: Is it something that was prepared by someone connected with the New York City Housing Authority?

THE WITNESS: Yes. It was part of the specifications for the job. It's a page out of the book.

MISS FINGERHOOD: If your Honor please, he said he didn't know. How could he know it is out of a book?

THE DISTRICT ATTORNEY: Do you object?

MISS FINGERHOOD: Yes.

THE COURT: Sustained.

Q What book is this a page out of?

A The specifications for the construction of the project.

Q And where is this book kept?

A I have a copy in the field office on the site.

Q And where did you get this book?

A Sir?

Q Where did you get this book?

A It was at the site when I was assigned to the site.

Q Now, after looking at this page out of this book and looking at the site itself, would you say that this is a fair and accurate representation of the site itself?

A It is. Its dimensions are there clearly.

THE DISTRICT ATTORNEY: I reoffer this into evidence as People's Exhibit One.

MISS FINGERHOOD: I object.

THE COURT: Sustained.

THE DISTRICT ATTORNEY: I ask this slip of paper be marked People's Exhibit Two for Identification.

(Marked People's Exhibit 2 for Identification by Court Officer)

BY THE DISTRICT ATTORNEY: (cont'g)

Q I show you People's Exhibit Two for Identification and ask you do you know what this is?

A Yes, this is a copy of a blueprint blueprint showing -- this is a detailed site plan for the Rutgers Housing project.

Q And do you know who prepared that?

A The architect, Hart Gejerman and Associates.

Q And do you know whether or not that is a certified blueprint?

A Yes. The seal appears on this, "Registered Architect Charles Hart, Number 1306."

Q Now, did you ever see this blueprint before?

A Yes, we have a copy of this at the field office.

Q And, in fact, did you procure this blueprint and give it to me earlier this week?

A Yes.

Q Where did you obtain it from?

A From my field office.

THE COURT: Is that a blueprint of the Rutgers Housing site?

THE WITNESS: Yes, sir.

THE DISTRICT ATTORNEY: I offer this

blueprint into evidence.

MISS FINGERHOOD: I object on two grounds, your Honor, one of which is that there is no indication this site follows the blueprint.

THE COURT: That what?

MISS FINGERHOOD: That is follows the blueprint. He said he got it day before yesterday or something and gave it to Mr. Lehner. The other ground is that I really think this is irrelevant to the charge in this case. They have not charged the defendants with entering into the project, but lying across the entrance. The Information does not state that they were on the property or on private property.

THE DISTRICT ATTORNEY: Well, the charge is, your Honor, intrusion onto real property.

THE COURT: Objection overruled.

THE DISTRICT ATTORNEY: May we have it marked?

(Marked People's Exhibit Two in Evidence by Court Officer)

BY THE DISTRICT ATTORNEY: (cont'g)

Q I show you People's Exhibit Two in Evidence and ask you to indicate--

MISS FINGERHOOD: Excuse me. May I see it?

THE DISTRICT ATTORNEY: Surely.

(Document handed to Defense Attorney)

THE DISTRICT ATTORNEY: Withdrawn.

(Conference between Defense Attorney and two Defendants)

Q I show you People's Exhibit Two in Evidence and ask you if you would indicate where the entrance to the project is on Rutgers Street?

Entrance on Rutgers Street

A By pencil?

Q If you would, yes.

A Here (indicating).

Q And would you indicate where the project property line is in relation to this entrance?

A Right here (indicating) as indicated.

MISS FINGERHOOD: I object, your Honor. There is no picture of that entrance on that map.

THE COURT: Well, he has indicated where it is.

MISS FINGERHOOD: From that?

THE COURT: From the map, yes. From the blueprint.

A (cont'g) This is the entrance to the construction site (indicating).

Q Will you put a Number 1 on the entrance to the construction site at Rutgers Street?

entrance Rutgers St

(Witness complied)

Q Will you please put a Number 2 on the property line on Rutgers Street of the project?

Property line on Rutgers St

(Witness complied)

Q Will you please put a Number 3 where the fence is in relation to the Rutgers Street project entrance?

MISS FINGERHOOD: I object, your Honor. There is no fence on that map and there is no way to tell what he is doing.

THE COURT: He is indicating where the fence is, with reference to the blueprint, on the blueprint.

MISS FINGERHOOD: But there is no foundation for him saying he knows where it is on that blueprint.

THE COURT: Objection overruled.

THE COURT: (cont'g) Now, Number 1 is what?

THE DISTRICT ATTORNEY: The entrance, the break in the sidewalk.

THE COURT: And Number 2?

THE DISTRICT ATTORNEY: The property line.

THE COURT: And 3?

THE DISTRICT ATTORNEY: Is the fence.

Q Would you draw a line on Number 2 showing the line? You just have a Number 2 there.

A Yes.

(Witness complied)

A (cont'g) It's written right on top of the property line.

Q I see.

THE DISTRICT ATTORNEY: Your Honor, I offer the People's Two to your Honor for inspection.

MISS FINGERHOOD: I object to this, your Honor.

THE COURT: Well, I have already -- Mr. District Attorney, will you assist the

Court with the Defense Attorney?

(Discussion off the Record.)
(Conference at the Bench)

THE DISTRICT ATTORNEY: No further questions.

THE COURT: Do you have any questions?

MISS FINGERHOOD: No, your Honor.

THE COURT: All right. Step down. Next witness.

THE DISTRICT ATTORNEY: Mr. Bantum.

THE BRIDGEMAN: Step up, raise your right hand, face the Judge.

ROBERT BANTUM, called to the stand as a witness on behalf of the People, upon first being duly sworn by the Court, testified as follows:

THE BRIDGEMAN: What is your name?

THE WITNESS: Robert Bantum, B-A-N-T-U-M.

THE BRIDGEMAN: Where do you live?

THE WITNESS: 652 Shady Street, Hempstead, New York.

THE BRIDGEMAN: What is your occupation?

THE WITNESS: Job Superintendent at

Rutgers Housing for S. S. Silverblatt, Incorporated.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q What is S. S. Silverblatt, Inc.'s connection with the Rutgers project?

A S. S. Silverblatt is the contractor for general construction on the job.

Q And what are your duties for S. S. Silverblatt?

A I supervise and coordinate the activities that come under the general construction phase of the work.

Q On July 11, 1963, were you present at the construction site in the morning?

A Yes, I was present.

Q And what business was being carried on at the construction site under your supervision?

A In the main, it was the erection of the reenforced concrete structure of the buildings.

Q And what materials were being used for this reenforcement?

A The materials involve the reenforcement concrete work such as concrete itself, reenforcing bars, lumber.

Q Was there any cement being used?

A Yes, there was.

Q Is there a subcontractor to S. S. Silverblatt? Is that Silverblatt's full name?

A S. S. Silverblatt.

Q Is there a subcontractor that supplies cement?

A We have a division which is listed a subcontractor which does the concrete work.

Q That's a division of S. S. Silverblatt?

A Yes.

Q What is that called?

A John A. Johnson & Sons Company, Division of S. S. Silverblatt.

Q Do you know whether Johnson Company hires a vendor to supply cement?

A S. S. Silverblatt hired the vendor, the Transit Mix Corporation.

Q Do you know what the duties of Transit Mix Corporation are in relation to the Rutgers project?

A To supply and control concrete for the job.

Q And how do they do that?

A By means of trucks.

Q On July 11,1963, was Transit Mix supplying cement to the construction site by means of these trucks?

A Yes, they were.

Q Do you recall being at the entrance to the Rutgers construction site, at approximately 11:50 A.M.?

A Yes, I was at the Rutgers entrance to the job at that time.

Q Did you observe something at that time?

A Yes, I did.

Q What did you observe?

Flesch removed from gateway

A I heard a commotion at the Rutgers Street entrance and when I arrived at the scene, I saw Mr. Flesch here being removed from the gateway, and Mr. Gore was laying on the ground in front of the concrete truck.

on ground front of truck

Q Where was the concrete truck in relation to the opening in the fence?

A It was a few feet from the gate; he had just made his turn.

Q And where was Mr. Gore at the time you saw him lying down?

Gore in line with post to gate

A He was laying on the ground, I would say, in line with the post to the gate.

THE COURT: May we have the indicated on the map? That is, on the diagram, on the blueprint?

BY THE DISTRICT ATTORNEY: (cont'g)

Q Would you say that was in the Rutgers Street side in the entrance to the project? Is that correct?

A Right in the gateway.

THE COURT: I mean, will the witness indicate -- if he can.

THE DISTRICT ATTORNEY: I don't know whether the witness is familiar with blueprints; however, I will show it to him.

(Document handed to Witness)

THE COURT: Now, according to the testimony of Mr. Klorfein, the entrance is marked #1; the property line is marked #2, and the fence is marked #3. Now, can you -- with that in mind -- indicate where the Defendant Gore was lying and where you saw the Defendant Flesch?

THE WITNESS: If I can.

THE COURT: All right.

THE WITNESS: Right here (indicating). He was lying in the gateway which is on Line #3.

THE COURT: On Line #3? line 3

THE WITNESS: Yes, which is the fence line.

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THE COURT: Indicated by #3. Is that as to both defendants?

THE WITNESS: Well, when I arrived this Flesch was being carried away. He was not on the ground.

Flesch carried away

BY THE DISTRICT ATTORNEY: (cont'g)

Q Where was he in relation to the truck?

A He was in front of the truck, being removed.

Q Where was he in relation to the fence at the time you saw him being removed?

A I don't understand that question.

Q Where was Mr. Flesch in relation to the truck and the fence at the time you saw him being carried by the officers?

THE COURT: Was he inside?

THE WITNESS: Approximately in the gateway.

THE COURT: Where were you?

20 feet away

THE WITNESS: I was some twenty feet away.

Q When you mention Mr. Gore and Mr. Flesch, do you see them in Court today?

A Yes, I do.

Q Will you point them out?

A Mr. Gore to the right, my right; Mr. Flesch on my left.

THE DISTRICT ATTORNEY: Identifying the two defendants individually. You may inquire.

CROSS EXAMINATION:

BY MISS FINGERHOOD:

Q Mr. Bantum, you say you were twenty feet away when you saw this incident. Where were you?

A Well, I was on Monroe Street which is a dead street that runs through the middle of the project and I heard this commotion at the gate. When I arrived at the scene it was twenty feet away.

Q Were you north of the gate or south of the gate?

A I was west of the gate. Monroe Street runs east and west.

Q Were you inside the project or outside?

A Inside.

Q Facing toward the outside of the project?

A Well, when I heard the commotion I faced toward the outside of the project.

Q When you saw this incident, were you facing toward the outside of the project?

A I was facing toward the outside.

Q And about how many feet inside the project were you?

A When I arrived to see what was happening, when I could see what was happening, it was about twenty feet inside the project.

Q And then, I gather from what you said, you were looking directly outside, toward the outside, through the gateway?

A Right.

gate open

Q Now, this gateway, was it closed or was it open?

A It was open.

Q Do the doors swing open or shut?

THE DISTRICT ATTORNEY: Objection to that question, your Honor. I think it is a little ambiguous.

THE COURT: Well--

A (interrupting) It's with two halves on hinges.

Q When the doors are open, are the doors outside the project or inside the project?

A Inside the project.

Q They open into the project?

A Right.

Q What does the ground in front of the gateway look like?

A It's a former street with curbs. forme street

Q What is on the ground when you walk through?

A It's a paved street. Paved street

Q Paved street?

A Yes.

Q And where the gate is, is there cement there?

A Right, or asphalt.

Q Do you know which?

A Not at this particular location.

Q Is there dirt there?

A There is some dirt there covering the pavement.

Q Covering the pavement?

A Yes, right.

Q How wide is this gate?

A Eighteen feet.

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18 feet

Q And when you looked outside you saw Mr. Flesch being carried away?

A Right.

Q Was he inside the gateway?

A From my view he was approximately in the middle of the gate. He was in front of the concrete truck which was making its turn into the project.

approximately middle of gate

Q You testified he was being carried away?

A Right.

Q Well, how far had they carried him?

A He was being carried away...

Q Yes?

A ...at the time I arrived at the scene where I could clearly see what was happening.

Q Did you also look at the posts of the gate?

A No, not at that time.

Q When you looked at Mr. Gore, where was he?

A He was laying on the ground.

Q Did you look at the posts of the gate when you saw him?

A Yes, I did, because he continued to lay there and I stood in the gateway myself.

Gore in gateway

THE COURT: Just answer the questions.

THE WITNESS: Yes, sir.

BY MISS FINGERHOOD: (cont'g)

Q Then you were looking directly at Mr. Gore and he was laying on the ground?

A Right.

Q Was he to your left or to your right?

A At one time I was standing directly over him.

Q When you were looking at him from twenty feet away, was he to your left or to your right?

A He was in front of me.

Q When you were facing where you were facing, was Mr. Flesch to Mr. Gore's left or to Mr. Gore's right?

A From my view he was on the right of Mr. Gore, being carried away.

Q And when you came up to Mr. Gore, did you measure the distance he was away from the posts?

A No, I did not measure it.

Q And was there any boundary line there?

A The fence and the gate itself.

boundary line
open gate

Q But the gate was open?

A Yes.

Q Was there any boundary line?

A No. Unmarked.

imaginary
boundary line

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MISS FINGERHOOD: That's all.

THE DISTRICT ATTORNEY: No further questions.

THE COURT: Let's adjourn now to 2:00 o'clock.

THE DISTRICT ATTORNEY: If your Honor please, may I ask at this time whether the witnesses who have testified will be recalled? Otherwise, we will excuse them.

MISS FINGERHOOD: No.

THE COURT: You may be excused. Thank you.

(The Court then recessed until
2:00 o'clock P.M.)

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AFTERNOON SESSION

(The trial was continued.)

THE COURT: Case on trial.

THE BRIDGEMAN: Recalling Docket #B-5391, Walter Flesch, charged with 2036 of the Penal Law, and Docket #C-11550, same defendant, charged with Disorderly Conduct; and

#B-5390, Robert Gore, charged with 2036 of the Penal Law, and Docket #C-11549, Robert Gore, charged with Disorderly Conduct, Subdivision 2. This is a continued case from this morning, your Honor.

THE COURT: I believe we have finished with Mr. Bantum.

THE DISTRICT ATTORNEY: Yes, sir. Mr. Wylie.

THE BRIDGEMAN: Step up, raise your right hand and face the Judge.

JOHN WYLIE, called to the stand as a witness on behalf of the People, upon first being duly sworn, testified as follows:

THE BRIDGEMAN: State your name, address, business or occupation for the record.

THE WITNESS: John Wylie, W-Y-L-I-E, 24 Brookwood Avenue Parkway, Jackson, New Jersey.

THE COURT: What is your occupation?

THE WITNESS: Truck driver.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Sir, whom are you employed by?

A Transit Mix.

Q And on July 11, 1963, were you employed by Transit Mix?

A Yes.

Q And what were your duties that day?

A Bringing concrete to Silverblatt.

Q And where were you delivering it from and where were you taking it to?

A I was pulling the truck out of 23rd Street and East River yard and delivering it to Rutgers and Monroe.

deliver it to Rutgers + Monroe

Q That's Rutgers and Monroe Streets in the County of New York?

A (nodded head affirmatively)

Q Approximately how many trips did you make on July 11, 1963 to that construction site?

A That was my third.

Q When did you make your first?

A About 8:00 o'clock.

Q And approximately when did you make your second?

A About 10:00.

Q And when did you make your third?

A About 11:30.

Q And when you made your third trip, what street did you enter coming to the construction site?

A Rutgers.

Q And after driving up Rutgers Street, what did you do?

A I was making a turn on Monroe and two fellows come across the gate and laid down in front of the truck.

turn on Monroe

laid down in front of truck

Q Now, when you say you were making a turn onto Monroe Street, is Monroe a throughway street in that area?

Monroe — throughway street

A It is the entrance in the housing project.

Q It is a throughway in that area?

A Yes.

Q Where did these two people — did you see where these people came from?

A They were standing on the gate.

THE COURT: On the gate? Standing on the gate?

THE WITNESS: Yes, or on the walk.

THE COURT: They were in that area?

THE WITNESS. Yes.

Q What, if anything, did they do?

A Well, they walked in front of the gate and somebody said, "Somebody's lying down in front of the truck," so I stopped the truck.

walking front gate

Q And where did you stop the truck?

A Approximately four feet from the gate.

Q And where were the defendants laying in relation to the gate?

A Well, I stopped the truck and I got out of the truck and I seen one of the defendants being carried away and one was laying directly across the gate.

Flesch
One carried away
other across gate

Q The two people that came in front of your truck and were lying in front of your truck, did you see them in Court?

A Yes.

Q Will you point them out, please?

A There (pointing), and there.

THE DISTRICT ATTORNEY: Indicating the two defendants separately.

Q Now, you said you saw one of the defendants being carried away?

A Yes.

Q Do you know which one that was?

A That one (indicating).

THE DISTRICT ATTORNEY: Indicating Mr. Flesch.

BY THE DISTRICT ATTORNEY: (cont'g)

Q And where was he at the time you saw him being carried away?

A I didn't see where he was at the time but I seen them carrying him past the truck.

Q And did you see where the other defendant was when you got out of the truck?

other D in front of gate

A Yes, he was lying in front of the gate.

Q And where, in relation to this fence, was he lying?

across entrance

even with posts

A Across the entranceway, right across the entrance where the trucks go in, even with the two posts.

Q Even with the two posts?

A I would say so, yes.

Q What happened next?

A I parked the truck and I got out and the defendant just laid there until the officers come over and they waited for the paddy-wagon, I guess, and they took them away, and I drove into the project.

Q How long was your truck at this particular place, approximately four feet from the entrance to that gateway?

A Ten or fifteen minutes, I guess.

Q And during those ten or fifteen minutes, did you see where Mr. Gore was?

A Yes, lying in front of the gate.

Q Laying where?

A Lying in front of the gate.

Q Where in relation to the gate?

A Between the two posts.

Q Between the posts?

A Yes.

Q Did you eventually bring that cement truck into the project?

A Yes.

THE DISTRICT ATTORNEY: You may inquire.

CROSS EXAMINATION:

BY MISS FINGERHOOD:

Q When you make a turn from Rutgers Street to Monroe Street, is there an incline?

A Yes.

Q Where does the incline begin?

A By the park, I'll say, I don't know the name of the street, at the beginning of the housing project coming up Rutgers.

Q On Rutgers the incline begins?

A All Rutgers is inclined; the whole street is inclined.

Q And is there a further incline on Monroe?

A No, it levels off at Monroe.

Q Does the entrance on Monroe Street which we have been referring to as an entrance, is it flat?

A When you enter the project, yes.

Q Where it crosses Rutgers, is Monroe Street flat?

A Where it crosses, I would say it is fairly flat, yes.

Q It's very flat. And what is the roadbed of Monroe where it meets Rutgers like?

A The condition?

Q Yes.

A Well, it has dirt on it. The gateway you are talking about?

turning onto Monroe

Q I am talking about where Monroe and Rutgers Streets meet; you were turning your truck, you said, from Rutgers Street to Monroe Street. Is that what you said?

A Right.

Q And I would like to know where Rutgers Street meets Monroe Street.

Rutgers + Monroe St
At The gate

A At the gate.

Q Where Rutgers Street meets Monroe Street, what is the condition of the road?

A The condition?

THE COURT: You mean proceeding on Rutgers? You want to know whether it is inclined?

MISS FINGERHOOD: No, Rutgers and Monroe Streets meet and I want to know the condition of the road where they meet.

THE COURT: You mean whether it's even or uneven?

MISS FINGERHOOD: Uneven or even, covered with dirt.

Q Describe it.

A Fairly flat land covered with dirt.

Q Is the dirt even?

A I couldn't tell you whether it's even or not. It's fairly flat.

Q Is it bumpy?

A No, it's fairly flat.

flat

Q Is there a lot of dirt over the concrete?

A I couldn't tell you.

Q Does the dirt begin before the posts of the gate?

A I couldn't tell you that.

Q Is there dirt on Rutgers Street?

A On the street? No.

Q I see. Were the wheels of your truck on dirt when you stopped?

A I couldn't tell you.

THE COURT: When you stopped in front of the gate.

THE WITNESS: I can't tell you.

MISS FINGERHOOD: Thank you. That is all.

THE DISTRICT ATTORNEY: No further questions. Officer Morrison.

PTL. ALEXANDER MORRISON, called to the stand as a witness on behalf of the People, upon first being duly sworn by the Court, testified as follows:

THE BRIDGEMAN: Give your name, shield number and assignment.

THE WITNESS: Patrolman Alexander Morrison, Shield #22918, 16th Precinct.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Officer, on July 11, 1963, were you doing a tour of duty?

A Yes, I was, 6:00 A.M. to 2:00 P.M.

Q How were you dressed doing your tour of duty?

A In the uniform of a police officer.

Q Do you recall where you were just before noon on that day?

A I was on Rutgers Street, opposite the LaGuardia Houses.

Q And what did you observe, if anything, at that time?

A Well, it was about 11:50, a little before noon. I was across the street. I noticed a commotion. I saw the truck in the driveway and I saw police officers going over. I crossed the street and when I got there I saw the two defendants lying down in the gateway where the truck goes through, the driveway.

2 Ds in gateway

Q When you say the two defendants, do you see them in Court?

A Yes.

Q Will you point them out, please?

A Mr. Flesch and Mr. Gore. (indicating)

THE DISTRICT ATTORNEY: Indicating the defendants individually.

Q Where were they in relation to the fence?

A I'd say they were lying about even in the driveway, the fence, right between the two posts.

both even in driveway bet 2 posts

Q What happened next?

A Well, there were about five or six police officers around Mr. Flesch and they were asking him to get up and--

Q Were these officers in uniform?

A Yes, they were all in uniform.

Q What, if anything, did Mr. Flesch do or say?

A The only comment I can think of -- I'm not sure it was mentioned just then. Like I say, he was asked a few times to get up and move to let the truck go by; the only comment I can recall is, "I am sorry. I have nothing against you but I can't help you," something to that effect.

Q Now, where was the truck at that time?

A The truck was approximately four feet in front of them -- the defendants.

Q In what direction was the truck facing?

A The truck was facing towards the project, going inside the project.

Q What happened next?

A Well, we asked the defendants to move and they refused.

Q Did he say or do anything besides what you told us?

A Besides saying he was sorry he couldn't help us, no. He was informed he was under arrest and he was picked up and carried to the side, to the left side.

Q What happened next?

A He sat there. I believe he got up once. He wanted to go, I believe, to see Mr. Gore but he was informed that he was under arrest and to stay on the side. Mr. Gore was still lying down in the driveway and he sat down again and he waited there until the wagon came.

Q What happened when the wagon came in relation to Mr. Flesch?

A When the wagon came, we asked him if he would walk to the wagon and he said again, "I am sorry.""

"I have nothing against you but I can't help you," and we carried him to the wagon.

Q You carried him and placed him in the wagon?

A Yes, sir.

Q Did you see where Mr. Gore was during this time?

A Mr. Gore was lying down in the driveway.

Q Where in relation to the fence?

A Approximately the same spot as the beginning, right between the two posts.

Q And did you see when Mr. Gore was moved?

A Yes, it was just about the same time as Mr. Flesch was moved.

Q The second time. But Mr. Gore was moved for the first time?

A Yes, when they were going to the wagon.

Q Do you know approximately how much time elapsed from the time you saw Mr. Gore and Mr. Flesch between the posts of the gate and the time Mr. Gore was carried to the wagon?

A To the time Mr. Gore was carried to the wagon?

Q Yes.

A I would say that was about ten minutes.

Q And how much time between the time you saw Mr. Flesch lying between the posts and the time he was arrested?

A That was about two minutes. Then he was moved over to the side. He was the first one moved.

THE DISTRICT ATTORNEY: No further questions.

CROSS EXAMINATION:

BY MISS FINGERHOOD:

Q I don't think I have this right. You came on the scene and when you got there you saw the defendants lying down?

A That is correct.

Q Where did you come from?

A Directly across the street.

Q You were standing across the street?

A That is right.

Q And then what did you do?

A I walked across the street to where the defendants were in front of the truck.

Q Did you walk to the left of the truck or to the right of the truck?

A To the left. I saw Mr. Flesch first.

Q Was the truck directed down Monroe Street?

A Well, it had come up Rutgers Street. I didn't see the truck come in; it was parked in the driveway pointing toward the inside of the project. I presume it had come up Rutgers.

Q Was the truck on Monroe Street?

A Yes, that's the driveway of the street there. It was in the intersection of Monroe and Rutgers, facing inwards to the project.

Q And what did you do when you got to where the defendants were lying?

A When I got there?

Q Yes.

A I came to see what was happening. I saw them lying down and the other police officers and myself were asking them to move.

Q What did you do?

A What did I do?

Q Yes.

A I asked them if they would move.

Q Who did you ask whether he would move?

A Mr. Flesch.

Q And what did the other officers do?

A The other officers were asking the same thing.

Q How many officers?

A I would say five or six officers.

Q All standing around asking Mr. Flesch if he would move?

A They were asked if they would move to let the truck go by.

Q And then what happened?

A We picked them up.

Q Who picked them up?

A I would say three or four officers.

Q And where did you move him to?

A I didn't hear you.

Q Where did you move him to?

A Toward the street and to the left of the truck. I believe it was on the curb. We placed him near some barriers.

Q When you moved him, he was lying in front of the truck, you said?

A That is correct.

Q Did you move him directly to the side of the truck?

A I don't understand what you mean by that.

Q When you moved him...

A Yes.

Q ...you moved him to the right, facing the housing project, you said.

A No, I was standing outside facing the housing project. We moved him to the left.

Q I see. About how many feet did you move him?

A Ten or fifteen feet.

Q And where did you drop him?

THE DISTRICT ATTORNEY: Objection, your Honor. There is no testimony as to dropping him.

THE COURT: The objection is to the word "dropped".

Q Where did you leave him?

A We placed him by the curb, like I said, near the barriers. I assume it was the curb. I don't remember the exact spot.

Q When you say you assume it was the curb, Mr. Morrison, where did the curb begin?

A I have no recollection as to where it

begins. I know we took him to the fence and put him to the side.

Q There was a curb?

A I really don't remember.

Q You don't know whether or not there is a curb?

A No. I know there is a sidewalk there.

Q How wide is the sidewalk?

A The walk is covered by building materials with lumber and everything else and we had to barricade it off, so I couldn't testify as to the size of the sidewalk.

Q I see. And about how wide is the space between the lumber material on one side of the walk and the lumber material on the other side of the walk?

A That would be the distance between the fences? Is that what you mean?

Q I asked you how far it was between the lumber material on one side of Monroe Street and the lumber material on the other side of Monroe Street?

A Approximately fifteen feet.

Q Yes, and after you carried Mr. Flesch, when you put him down, did you place him in front of the lumber material?

A No. It's not actually lumber material. It's barriers there. The lumber material is over the walk. This is, I assume, to keep stuff from falling down on people walking. There were barriers set up where they were supposed to picket on the side. The driveway was separated by barriers. We placed him right by the barrier.

Q Was this in front of the walk?

A Yes, I believe it was. I am sure it was in front of the walk.

Q If you don't know where the curb was, how do you know how wide the walk is?

A Whether there is a curb or not I don't know because of the material there.

Q Then how could you tell it was the walk if you couldn't tell where the curb was to the walk?

A It's concrete. You can see it right there.

Q You can't see where it ends?

A Well, it ends where there is a driveway to go into Monroe Street.

Q I see.

MISS FINGERHOOD: Thank you very much.

THE COURT: All right, step down. Thank you.

THE DISTRICT ATTORNEY: No further questions, your Honor.

THE DISTRICT ATTORNEY: (cont'g) Patrolman Kaminski, please.

THE BRIDGEMAN: Step up, face the Judge and raise your right hand.

WILLIAM J. KAMINSKI, called to the stand as a witness on behalf of the People, upon first being duly sworn, testified as follows:

THE BRIDGEMAN: State your name, shield number and assignment for the record.

THE WITNESS: Patrolman William J. Kaminski, Shield #22650, 21st Precinct.

DIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Officer, on July 11, 1963, were you doing a tour of duty?

A Yes, I was.

Q What was your tour of duty?

A 6:00 A.M. to 2:00 P.M. at the Rutgers Street Housing project.

Q Is that in the County of New York?

A Yes, it is.

Q How were you dressed at that time?

A In uniform.

Q Full uniform?

A Yes.

Q Do you recall where you were shortly before noon of that day?

A I was standing on the sidewalk on Rutgers Street, right next to the gate.

Q What gate would this be?

A Going into the housing project.

Q Did you observe something at this time and place?

A Yes.

Q What did you observe?

A I observed the concrete truck coming into the project and as it was coming into the project, the two
both laid down
defendants came over and laid down, obstructing the truck.

Q When you say the two defendants you saw, do you see them in Court?

A Yes, I do.

Q Will you point them out, please?

A Mr. Flesch and Mr. Gore. (indicating)

THE DISTRICT ATTORNEY: Indicating the two defendants individually.

BY THE DISTRICT ATTORNEY: (cont'g)

Q Now, where did you see Mr. Flesch and Mr. Gore go to?

A They laid down between the gate.

Q And is this the gate that is leading in the project on Rutgers Street?

A Yes, it is.

Q Where, in relation to the posts on either side of this fence, did you see them?

A Parallel with the two posts.

bet posts

Q You mean on a line between the two posts?

A Yes.

Q Where was the truck?

A Entering the project.

Q And how far from this imaginary line between the two posts was the truck?

A Three to four feet.

Q What next did you observe?

A Well, they were lying between the two posts in the project and we went over and asked them if they would please move.

Q Who asked who?

A I asked Mr. Gore and Mr. Flesch, directing the question to both of them, to please move, that they were obstructing the truck.

Q What, if anything, did either of them say or do?

A At first they both remained mute.

Q What happened next?

A I was asking them to please move; I asked them if they were sick or injured. I got no reply. I asked them three times in succession, "Would you please move?"

Q Who did you ask, "Are you sick or injured?"

A Mr. Gore.

Q Did he say anything?

A At the time he didn't reply to me.

Q What did you say after that?

A I asked them three times in succession, "Please move", and that's when he said to me, "I am sorry, I can't help you."

Q "Sorry, I can't help you?"

A Yes.

Q Where was Mr. Flesch at this time?

A Mr. Flesch was beside Mr. Gore.

Q What happened next?

A Mr. Flesch was removed from obstructing the truck.

Q Were you one of the officers that removed him?

A No, I was not.

Q What happened next?

A Well, after informing them they were under arrest, that they had broken the law, we remained waiting for the patrol wagon to remove them.

Q Where was Mr. Gore at the time he was placed under arrest?

A Lying on the ground between the two fence posts.

Q Approximately how much time elapsed between the time you first asked Mr. Gore to leave until you placed him under arrest?

A A matter of a minute.

Q Where was Mr. Gore after he was placed under arrest?

A Lying on the ground.

Q And did a police wagon come sometime later?

A Yes.

Q And approximately how much time later was Mr. Gore removed from that particular spot?

A Ten minutes.

Q What happened at that time?

A I had to carry Mr. Gore into the wagon with the help of three other patrolmen.

Q Did you say anything to him at that time?

A I asked him to walk to the wagon.

Q Did he say anything?

A Just about every time I asked him a question he said, "I'm sorry; I can't help you."

Q How was Mr. Gore taken to the wagon?

A Carried.

Q By how many officers?

A Four.

THE DISTRICT ATTORNEY: That's all. You may inquire.

CROSS EXAMINATION:

BY MISS FINGERHOOD:

Q Mr. Kaminski, how wide was the sidewalk fronting on Rutgers Street, where Rutgers Street meets Monroe Street?

A How wide would the sidewalk be?

Q Yes.

A At Monroe Street?

THE COURT: Do you know?

Sideway

THE WITNESS: Three or three-and-a-half feet.

Q When you saw Mr. Gore and Mr. Flesch, were they lying parallel to the sidewalk?

A Yes, between the two posts of the gate.

Q Were the posts of the gate next to the sidewalk?

posts in towards project
the gate

A No, I believe they are in towards the project a little bit.

Q In your direct testimony, Mr. Kaminski, you said that Mr. Gore and Mr. Flesch were lying two or three feet from an imaginary line. What do you mean by an imaginary line?

THE DISTRICT ATTORNEY: Objection, your Honor.

/

THE COURT: I don't recall any two or three feet being mentioned. Do you recall any such testimony? It's possible but I don't recall it.

MISS FINGERHOOD. I wrote it down, sir. The District Attorney asked him how far he was from this imaginary line and he said two or three feet.

THE DISTRICT ATTORNEY: I would like for that to be re-read.

THE COURT: Do you recall being asked that question?

THE WITNESS: No, your Honor.

BY MISS FINGERHOOD: (cont'g)

Q Mr. Kaminski, did you speak to Mr. Flesch?

A When I first arrived on the scene,yes.

Q How many police officers were there at the scene when you arrived?

A I was the first police officer on the scene.

Q After you spoke to Mr. Flesch, did you speak to Mr. Gore?

A Yes.

Q I see. Thank you.

THE COURT: All right.

THE DISTRICT ATTORNEY: May I have one further question?

THE COURT: Yes.

REDIRECT EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Where, in relation to the imaginary line between the two posts of the fence, did you see the two defendants lying?

A Let me see if I have your question. Imaginary line?

Q The line between the two posts of the fence. When the gates are open there is a line between the two fences?

MISS FINGERHOOD: Objection on that.

THE COURT: Sustained as to form. After a line was drawn between the two gates. Fix in your mind if a line were drawn between the two gates. Is that what you have in mind?

THE DISTRICT ATTORNEY: Yes.

THE COURT: Ask the question.

Q Where were the defendants in relation to this imaginary line?

between 2 posts

A Exactly between the two posts.

THE DISTRICT ATTORNEY: No further questions.

MISS FINGERHOOD: May I ask a question?

THE COURT: Yes, surely.

RECROSS EXAMINATION:

BY MISS FINGERHOOD:

Q Mr. Kaminski, you were standing in front of the truck talking to the defendants. Was it possible to see both posts?

A Yes.

Q Was it possible to see both posts and the defendants at the same time?

A No, not at the same time.

MISS FINGERHOOD: Thank you.

THE COURT: All right, step down.

THE DISTRICT ATTORNEY: No further questions, your Honor. That's the People's case.

THE COURT: May I see the blueprints, please?

(Documents handed to the Judge)

MISS FINGERHOOD: Your Honor, I move to dismiss against both of these defendants. Section 2036 is a misdemeanor statute--

THE COURT: I am sorry, I didn't hear you. You say you move to dismiss, then you said--

MISS FINGERHOOD: The charge. This is a misdemeanor statute in which the Information does not charge acts constituting a violation of that statute. The Information charges that these defendants laid on their backs across the entrance. It does not say that they were on the premises. It does not say that they intruded on private premises. We have no evidence in this record that these premises were private. As a matter of fact, it has been referred to by the People's witnesses as a public street, Monroe Street. I don't believe this statute can be interpreted to cover people who unintentionally may pass an imaginary boundary line which nobody has really seen and which is not the mark-off to a private part of land, and where there is no testimony on the record that this was private land.

info doesn't say
on premises
or intruded
that they
no evidence
are private
a public street

I believe, also, the Information does not give warning of the charge that the defendants violated this statute in that the

Information does not state they were on the premises as is required by the statute, or that they did not have the permission of the owner of the premises, which is also required by the statute.

THE COURT: All right. That motion is denied as to both defendants.

MISS FINGERHOOD: I would also move to dismiss the 722 charge on the ground that there is no evidence in the record that there was any public disturbance here, or that anybody was interfered with or annoyed. This is a situation in which we have had testimony from police officers that these defendants stopped a single truck, and that they were moved promptly, the figure used, "for one minute", I believe. There is no testimony there was any public commotion or that anybody was disturbed.

THE COURT: That motion is denied as to both defendants.

MISS FINGERHOOD: I call Mr. Gore.

THE BRIDGEMAN: Step up, face the

Judge, raise your right hand.

(At this point Defendant Gore advised the Court he would not swear, whereupon the Court substituted the words "affirm and promise".)

ROBERT BROOKINS GORE, called to the stand on his own behalf, upon first affirming, testified as follows:

THE BRIDGEMAN: State your name, address, business or occupation.

THE WITNESS: Robert Brookins, B-R-O-O-K-I-N-S, Gore; 620 West 147th Street.

THE COURT: Your occupation?

THE WITNESS: Assistant Community Relations Director, for the National Office of the Congress of Racial Equality.

THE COURT: Do you realize even though you have only affirmed, that you are still bound by the laws of perjury?

THE WITNESS: Yes.

THE COURT: Proceed.

DIRECT EXAMINATION:

BY MISS FINGERHOOD:

Q Mr. Gore, on July 11, 1963, did you go to Rutgers and Monroe Streets in New York City?

A I did -- and what street?

Q Monroe.

A Yes.

Q At about what time did you get there?

A I believe it was around 11:30.

Q What did you do when you got there?

A I joined a group of picketers who were to the east of Monroe Street--to the west of Monroe Street.

Q Is there a project called Rutgers Housing project on one side of Rutgers Street, crossing Monroe Street?

A Yes.

Q Were you picketing on the right or left of Monroe Street facing Rutgers Street?

Picketing on left facing Rutgers

A On the left of Monroe facing Rutgers.

Q About how long a time did you spend on the picket line?

A About twenty minutes or so.

Q And then what happened?

A A truck was coming up Rutgers Street and it was apparent that it was going to turn into what I now know is Monroe Street, and I went under a barricade. I took the picket sign I was carrying and laid it on the ground and went under the barricade, first sat down, then laid down in front of the truck.

Q Where was the barricade you went under?

A Outside the construction site on the left of Monroe Street.

Q About how far did it intrude into Rutgers Street?

A I would guess at least a quarter of the way.

Q How many feet?

A I'm not good at this. I would say fifteen to twenty feet.

Q Did the barricade begin after the walk which bounded Rutgers Street?

A To the best of my knowledge, the barrier was outside the walk.

Q I see. Mr. Gore, did you intend to lay down on the housing project's private property?

no intention to lay on private ground

A No.

THE DISTRICT ATTORNEY: I didn't hear the answer.

THE WITNESS: No.

Q Mr. Gore, did you know where you were in relation to the fence which is around the Rutgers Housing project?

A Yes.

Q Where were you?

A To the best of my knowledge, while I was lying down -- it was not easy to see -- but to the best of my knowledge, I was to the north of the fence. -north of fence

Q Would that be to the road side?

A Yes.

Q How many feet away from the fence were you?

A The gate was open.

Q Right from the fence itself, from where the gate began.

A I don't know.

Q Was there a demarcation point between the two posts of the entrance?

A No, there wasn't.

Q From where you were laying, could you see the two posts?

A I could see the one which was in front of me.

Q When you say "in front of me", do you mean between you and the project?

A No, I was lying -- as I was lying there, there was one post behind and one before. The project was to my right; Rutgers Street was to my left.

Q Were you on a parallel line between the two posts?

A Parallel to what?

Q These posts are parallel to each other, are they not?

A Yes.

Q Were you in front of the line, the parallel line, which would link them together or on it?

Rutgers St side

A I was to the Rutgers Street side of this parallel line, if there were one.

Q I see. Thank you. Now, how many pickets were there, Mr. Gore?

A I think there were, roughly, a dozen.

Q How many policemen were there, Mr. Gore?

A Somewhere between fifteen and twenty, I would guess.

Q Were there any reporters and cameramen?

A Yes, there were.

Q About how many?

A There were a number of people in plainclothes. Some of them may have been policemen; some of them may have been reporters. I would guess, maybe, ten or fifteen of these people.

Q Were those people there when you arrived?

A Yes.

Q Did any additional people come when you laid down in front of the truck?

A I did not see any additional people, no.

Q I see. Mr. Gore, why did you lie down in front of the truck?

A It was an attempt to halt the construction at this particular site. Previously we had asked the Mayor to halt the construction as a result of the discriminatory hiring practices that we believed were being carried on at this site. The Mayor took no action. We had asked the Governor to do the same. He had taken no action. So we thought, perhaps, by our dramatizing the situation, this illegal situation as we felt, perhaps we could convince the Mayor that he should uphold his own laws.

Q When you say "we", of whom do you speak?

A The Congress of Racial Equality.

Q And you are employed by the Congress of Racial Equality?

A Yes.

MISS FINGERHOOD: I see. Thank you, Mr. Gore.

CROSS EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q On July 11, 1963, were you sent by the Congress of Racial Equality to the Rutgers site?

A No.

Q Previously to that, were you sent by the Congress of Racial Equality to the construction site?

A No.

Q Did any one send you to that particular site?

A No.

Q When did you first arrive that that particular site, the Rutgers Housing project?

A It was approximately 11:30.

Q Was that the first day you were there?

A Yes...well, I had been in the area before but this was the first day I was there in connection with the discrimination.

Q Were you there in connection with the CORE picketing that was occurring at that time?

A Yes.

Q Were you one of the organizers of this picketing?

A No.

Q How did you come to arrive at the Rutgers site? Did anyone tell you to be there?

A No.

Q Was there a meeting beforehand in which you attended?

A No.

Q When you arrived at the site, what did you see?

A I saw the picketers there and the police who were there.

Q And what did you do after arriving there?

A I joined the group of pickets.

Q And where did you walk?

A We walked in a circle -- well, in an oval, really, to the west of the entrance.

Q What time did you start picketing and what time did you finish your picketing?

A I started, roughly, around 11:30. I don't know exactly what time it was. And apparently stopped around ten minutes of 11:00 -- 12:00, excuse me.

Q At the time you stopped picketing, what did you do?

A I took the picket sign off and went under the barrier.

Q Where was this barrier in relation to the fence?

A We have been talking about a fence. Now, it is not clear in my mind--

THE COURT: Gate.

THE WITNESS: Yes.

A (cont'g) The barriers were -- well, the barriers were in Rutgers Street; the gate itself is in Monroe Street.

gate in Monroe St

Q Well, how far is this barrier from the gateway which leads from the project on Rutgers Street?

A I would guess twenty feet; I don't know.

Q After going under this barrier, what did you do?

A Because the truck wss coming to gain entrance to the project I went to where the entrance of the project was and lay down.

to entrance + layd down

Q Anybody else go with you?

A Yes -- well no, not with me.

Q Did anyone else follow you?

A After I arrived there I observed someone else there.

Q Was it this defendant?

A Mr. Flesch.

Q Where did you go when you arrived there?

Q I went to in front of the truck, in the middle of the gateway, between the gateway and the truck.

in front of truck

middle of gateway

Q You said "in the middle of the gateway"?

A When I said the middle, I meant -- you know, there are two poles here and I was in the center of these two poles, not where they are but in terms of the distance between the two poles.

Q And how far were you from the imaginary line connecting the two posts?

A I am not able to say how far I was but, to the best of my knowledge, I was to the Rutgers Street side of this imaginary line.

Rutgers St side of imaginary line

Q Approximately how far?

A Not very far; I don't know. I wasn't in a measuring mood at the time.

THE COURT: Would any part of your body, would you say, have touched the imaginary line?

no part of body touched imaginary part

THE WITNESS: I would think not.

THE DISTRICT ATTORNEY: (cont'g)

Q Then you saw the gate, the posts, on either side of you when you were laying down?

A I could see the one post.

Q Well, how far in front of that post were you?

A When you say "in front of", I am not sure of what you mean.

Q In front of the line connecting the two gates.

A I see. I was just to the Rutgers Street side of it.

Q Is that within one foot?

W/1 one foot

A Within one foot, I would say.

Q Within one foot of the imaginary line connecting the two posts, is that correct?

A I would say so.

Q And where was Mr. Flesch?

A Mr. Flesch was sitting directly in front of me. I was lying down; he was sitting.

Q When you say directly in front of you, which way were you facing?

A My feet were pointed east. My head was pointed west. Mr. Flesch was toward my feet.

Q And you say your head was pointed east?

A My feet were pointed east.

Q And therefore you would be parallel to the imaginary line connecting the posts?

A Correct.

Q Where was Mr. Flesch?

A Toward my feet.

Q And how far away from your feet?

A It's hard to see that from a lying position.

Q Approximately?

A I don't know.

Q And would he be on a point which would be the same distance away from the imaginary line as you were?

A I would think so, yes.

Q How far was the truck from you?

A Several feet.

Q Could you give us a rough estimation?

A Several feet. If I said five feet I might be off; if I said two feet I might be off.

Q Between two and five feet?

A It may have been one foot. I wasn't paying that much attention.

Q At the time you sat down, was the truck still moving?

A I think not.

Q What happened after you sat down?

A Two police officers dragged me away and deposited me near the barrier.

Q Did they say anything prior to dragging you away?

A To the best of my recollection they said nothing, just dragged me away.

Q How far did they drag you?

A From where I was sitting or lying to the barrier which I would say was about fifteen or twenty feet. I am not sure.

Q What happened then?

A I got up and went back and laid down again.

Q This time, where did you lie down?

A The same place.

Q Where was Mr. Flesch at the time you went back?

A I believe he was not there when I went back; I am not sure. The time sequence is not clear.

Q At this time did you sit down or lie down?

A I lay down.

Q What happened next, sir?

A Several police officers gathered around and several newsmen and they were having discussion amongst themselves -- the police officers were.

Q Did you hear what that conversation was?

A I recall one of the officers mentioning something about -- they were discussing whether I was trespassing or, this was the general discussion, if there was any law I was breaking, what the law was.

Q And the word "trespass"?

A I do recall that word specifically being used.

Q Did you do anything after you heard the word "trespass"?

A I lay down.

Q At the same spot?

A Yes.

Q Did you lay at the same spot at which you had been lying?

A The whole time I was lying there I was moving.

Q You said after you heard the word "trespass", you just continued to lie there, is that correct?

A Correct.

Q You said you were laying in the same spot, is that correct?

A Right.

Q Up to this time were you placed under arrest?

A To the best of my knowledge, I never heard any one say, "You are under arrest."

Q After you heard the word "trespass"--

MISS FINGERHOOD: I object, your Honor. He hasn't said who said the word "trespass".

THE COURT: He said the police were discussing it and he heard the word "trespass."

MISS FINGERHOOD: But I think it is irrelevant.

THE COURT: Objection overruled.

BY THE DISTRICT ATTORNEY: (cont'g)

Q After you heard this voice say "trespass", how long were you laying on that spot between the two posts before you moved?

A I would judge about ten minutes. Excuse me. Would you ask that question again? I want to be clear exactly what it is you are asking.

THE DISTRICT ATTORNEY: May we have the question read?

(Reporter re-read last Question)

A Approximately ten minutes. The reason I asked you that again, Mr. District Attorney, is because I think that's two questions.

Q Did you understand the question?

A I don't think so. I wish you would ask it again so I can understand it better.

Q After you heard the word "trespass", how long were you laying in your position before you were moved by the officers?

A The answer -- I would have to give the answer, "I don't know", because I don't know the time sequence when I heard him and when I first sat there.

Q What is your answer?

A I would have to answer, I don't know.

Q Well, approximately how long?

A I don't know.

Q Didn't you just give the answer of ten minutes?

MISS FINGERHOOD: I object. He said

he didn't know.

THE COURT: Objection sustained.

BY THE DISTRICT ATTORNEY: (cont'g)

Q During the time that you were lying in your position between the two gates and, you say, not more than a foot--

MISS FINGERHOOD: I object. He is testifying.

THE COURT: Let him finish.

Q --not more than a foot in front of the imaginary line joining the two posts, what did any officer say to you?

MISS FINGERHOOD: I object.

THE COURT: As to the form of the question, the objection is sustained.

Q Well, during the time you were lying between the two posts--

THE DISTRICT ATTORNEY: Withdrawn.

Q During the time you were lying in the position in which you have testified to, what, if anything, did any officer say to you?

A The only thing I recall the officer saying to me directly is, "I am asking you for the last time to move."

Q What, if anything, did you say or do after you heard that?

A I said words to the effect that, "I am sorry but I am unable to cooperate with you at this time."

Q Are those all the words you heard the officer use?

A To me, yes.

Q Did you hear any other words directed to you and Mr. Flesch?

A None.

Q What other words did you hear while you were lying down?

A A lot of people were saying a lot of things.

Q Your testimony is only once did an officer ask you to move?

A To my recollection, only once.

Q From the time you said, "I'm sorry, I can't help you out", to the time you were taken away, how long was that?

A I believe it was immediately after I said words to the effect, "I am sorry, I can not cooperate with you", that I was taken away.

Q You say the purpose for your being there was to demonstrate?

A No, sir.

Q What was the purpose?

purpose - discrimination

A My reason for being there was to point up the fact that despite laws in New York State and New York City, discrimination still existed in the building trades, and I wanted to dramatize and point this up so the Mayor and Governor would take action.

Q How did you intend to dramatize this?

A By doing what I did, by halting construction.

Q Did you intend to get arrested?

A No.

Q Did you know by what you were doing you would be arrested?

A No.

Q The person that asked you to move you told him, "I am sorry, I can't help you", was he in police uniform?

A I don't know. I wasn't looking, really.

Q Did you know him to be a police officer?

A I don't know.

Q Who did you think he was?

A I didn't know; I wasn't looking. I was looking straight ahead of me.

Q Did you know what was going on inside the construction site?

A (no response)

Q (cont'g) Did you know if there was any construction being accomplished inside the site?

A There appeared to be work going on, yes.

Q Did you know who was erecting the houses?

A When you say "who", I am not sure.

Q What entity?

MISS FINGERHOOD: I object.

THE COURT: I beg your pardon?

MISS FINGERHOOD: I object.

THE COURT: Objection overruled.

A I knew it was a city housing project, if that's what you mean.

Q Did you know the property was owned by the Housing Authority?

A No, I didn't.

Q You knew there was a project being constructed at that site?

A Yes.

Q And you saw a fence at that site, did you not?

A I saw a gate.

Q On either side of the gate was there a fence?

A I'm not sure; there must have been, but I don't recall seeing it. I want to make the distinction because I don't want to testify to something I'm not sure of.

Q Have you seen gates in the past?

A Yes.

Q In your experience in the past, have gates been dividing lines between an interior and an exterior?

MISS FINGERHOOD: I object, your Honor.

THE COURT: Objection sustained.

Q What did you understand that gate to divide?

MISS FINGERHOOD: I object, your Honor.

THE COURT: Sustained.

THE DISTRICT ATTORNEY: No further questions.

THE COURT: All right. You may step down.

(Conference at the Bench between Court, Defense Counsel and District Attorney)

MISS FINGERHOOD: I call Mr. Flesch.

THE BRIDGEMAN: Step up, face the Judge, raise your right hand, keep your voice up.

(Defendant Flesch advised Court he

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does not swear.)

THE COURT: Do you promise to tell the truth and the whole truth?

DEFENDANT FLESCH: Yes, I promise.

THE COURT: You realize, even though you have not sworn to tell the truth before God, you are liable to the laws of perjury if you tell an untruth?

DEFENDANT FLESCH: I understand that.

THE COURT: All right.

WALTER FLESCH, called to the stand as a witness on his own behalf, on affirmation, testified as follows:

THE BRIDGEMAN: Give your name, address, business or occupation.

THE WITNESS: Walter Flesch, 178 Thompson Street, New York City, waiter.

DIRECT EXAMINATION:

BY MISS FINGERHOOD:

Q Mr. Flesch, on July 11, 1963, did you go to Rutgers and Monroe Streets?

A Yes, I did.

Q And about what time did you go there?

A Oh, 11:30.

Q What did you do when you got there?

A I joined the picket line.

THE COURT: Keep your voice up.

THE WITNESS: I joined the picket line there.

Q How long were you on the picket line?

A Twenty minutes.

Q What were you doing on the picket line?

A We were marching around in a circular way.

Q How many people were there besides you?

A Ten people.

Q How many policemen were there?

A Twenty.

Q Were there many other people around?

A There were some spectators across the street.

Q Was there any traffic on the street?

A I wasn't watching. You mean before the truck came?

A When you arrived at the scene and you were marching up and down, the picket line, was there any traffic on Rutgers Street?

A I didn't notice.

Q Where were you marching on the street, Mr. Flesch?

A We were marching to the left of Monroe Street.

Picketing on Rutgers

Q And you were on Rutgers Street?

A Yes.

Q Were you on the sidewalk?

A No.

Q Were you in the street?

A Yes.

Q About how far into the street did you intrude?

A About fifteen or twenty feet, I guess.

Q And how broad is the street?

A About thirty feet, I guess.

Q Were you conscious of cars passing by as you were picketing?

A Yes, there were some.

Q How many?

A I would say, generally speaking, I think the traffic was scarce.

Q I see. Tell us what happened after you stopped picketing, Mr. Flesch.

A I took my picket sign off and I went under

Sat in entranceway

the barricade and I sat in the entranceway.

Q About how wide was the barricade?

A About fifteen feet.

Q What did it consist of?

A It was one of these wooden horses.

Q Was it the length of the usual wooden horse that we use?

A Yes.

Q And did you go directly under it?

A Yes.

Q And as you went under it, did you go straight or did you go to the left or did you go to the right?

A I went straight.

Q And did you sit down while you were still going straight?

A Yes.

Q And how far from the sidewalk were you when you sat down?

A How far from the truck was I? I don't know. We--

Q I asked you where you were.

A When the truck came up?

Q No, when you were laying down. Look, Mr. Flesch, if the truck was above you, you could see it?

A Yes. Could you repeat that question?

Q Where you were lying down, could you see the truck?

A Yes.

Q How far from you was it?

A Five feet.

Q Right, five feet. Thank you.

MISS FINGERHOOD: That's all.

CROSS EXAMINATION:

BY THE DISTRICT ATTORNEY:

Q Mr. Flesch, what was your reason for being at the site that day?

A To protest the discrimination--

THE COURT: I can't hear you.

A ---protest the discrimination in the building trade unions.

Q What was your purpose in sitting down in front of the truck as it was entering the site?

to protest

A Well, I felt that since there was discrimination going on there, this construction site should be closed down.

Q Did you understand that truck to be entering that site for workers to perform certain work there?

A Yes, I understood that.

Q You stated you sat in the entrance. Is that correct?

in path

A Yes, in the path that led up into the construction site.

Q Where did you sit in relation to the gate?

front of gate

A I would say a little bit on front of it.

Q Of what?

A You asked me where I was sitting in relationship to the gate. I said somewhat in front of it.

Q How far in front of it?

A Oh, I don't know -- a foot or two.

Q A foot or two?

A Yes, but it's approximate.

Q What happened after you sat down in front of the truck?

A Well, about four or five policemen, maybe more, came over and they hauled me over to the side.

Q Did they say anything to you?

A No, they didn't.

Q How long were you sitting in front of the truck before the police came and hauled you over?

A I would say a few minutes.

Q During those few minutes, were there any police around you?

A Yes, they were around me.

Q Did any of them say anything that you heard?

A Not that I recall, no.

Q What happened next?

A As I said, they dragged me over to the side.

Q Then what happened?

A They put me down. I got up; I started to walk back to where I had been. One of them grabbed me and said, "You are under arrest."

Q Then what did you do?

A I just stood there.

Q What happened next?

A Well, eventually the paddy wagon came and I walked into the van.

Q You walked into the van or were you carried?

A No, I walked in. I was carried to the side, but I walked into the van.

Q You sat down originally. Where did you sit in relation to Mr. Gore?

A I was parallel to him.

Q How far away from him?

A Ten feet.

Q Did you know what was being constructed at that site?

A Yes, I did.

Q What do you know to be constructed there?

A It was a City housing project.

Q Did you know who owned the property there?

A No, I didn't.

didn't know who owned property

Q When you sat down, did you see the fence?

A I saw the posts behind me.

Q And you saw the posts on either side of the gate before you sat down?

A Could you repeat that?

Q Did you see the posts on either side of the gate before you sat down?

A No, I don't think I saw them before I sat down, no.

Q Before you were moved from there, did you see the gate?

A I think I noticed, mainly, the posts.

Q Did you see that before you were moved?

A Yes.

Q Did you know that was the gate leading into the construction site?

A Yes.

THE DISTRICT ATTORNEY: No further questions.

THE COURT: Did you hear Officer Morrison testify you were carried into the van?

THE WITNESS: Yes.

THE COURT: Do you say that isn't so?

THE WITNESS: Yes, that is right. It isn't.

THE COURT: Any more questions?

MISS FINGERHOOD: No.

THE COURT: All right, step down. Has the Defense any other witnesses?

MISS FINGERHOOD: No, it rests.

THE COURT: Both sides rest?

THE DISTRICT ATTORNEY: People rest. Excuse me, your Honor, I didn't hear whether the Defense rests.

THE COURT: Defense said they rest.

THE DISTRICT ATTORNEY: People rest, your Honor.

THE COURT: Your motion.

MISS FINGERHOOD: Sir, I would like to renew my motion to dismiss the Information. I believe that the Information against both of these defendants, the two Informations, do not allege a violation of Section 2036. They state simply that the defendants lay on their back across the entrance to the premises, obstructing the entrance. They do not say that they were on private land or that they were trespassing or intended to trespass or that they knew, and they do not allege that there was no authority for them being on the place. There has been testimony here that this was the center of Monroe and Rutgers Streets, which is not private land. It is public land. It is not clear in my mind from all of the testimony, that anybody knows exactly where the defendants were. We have been given description where there were police horses erecting a barricade.

not on private land

or knew

no authority

Public land

These defendants went directly out of the barricade; that there is a walk of three and a half feet before there was a barricade, which is approximately fifteen feet; and yet that the sidewalk began before the fence posts, and that these people were directly in front of the barricade and, at the same time, directly between the two fence posts, and I really think there isn't any idea on this record as to where

not proved where they were

they were. I don't think it has been proved exactly where they were. I don't believe it has been proved that they could have or did

not proved they knew where project was

know where the project began and I don't think

not proved that Monroe St is private

it's been proved that Monroe Street, the entrance to the project, was private land.

So that I believe, on all the evidence, there is a reasonable doubt that these people were, in fact, on the land which is one of the elements of trespass, and certainly I think

no intention of intruding

there is absolutely no evidence that they had any intention of intruding on private land.

THE COURT: All right. Do you want to address yourself on the Disorderly Conduct?

MISS FINGERHOOD: Your Honor, on the Disorderly Conduct charge, there are three Court of Appeals cases in which people have been charged with violation of Subdivision 2 of Section 722 in which the Court of Appeals have held that unless there was evidence in the record that they annoyed and disturbed the public as a whole rather than the people directly involved in the incident, that they could not be found guilty of disorderly conduct.

I move to dismiss on the basis of all the evidence. I move for a verdict of Not Guilty on the ground that on all the evidence in this case, I believe there is a reasonable doubt due to the fact that this was a private disturbance. We have had no evidence here that anybody was involved except the people whom we have seen here, a City contractor working for a City which has this problem under advisement, which knew about this problem and was aware of it and considering it; the demonstrators who were trying to make stronger their point of this; the policemen who had come upon the scene before these defendants in order to make sure that the situation was an orderly one. It was well known to everybody that there was going to be an attempt to make a visible and strong dramatic protest against a City policy, and the City officials were aware of this and, I believe, fairly sympathetic to it. The police had instructions to be very gentle and there was no possibility in this situation of there being a public disturbance. There is no testimony there was traffic on the street; there is no testimony there was confusion or excitement.

I plead under People vs Casen,* 8 New York 2d, 89d; People vs Nixon,* which is also a picketing case, 248 New York 182, and under People vs Carvel*, 3 New York 2d, 327.

THE COURT: Those are picketing cases?

MISS FINGERHOOD: Not all of them.

THE COURT: You said "also" picketing

*phonetic

case.

MISS FINGERHOOD: People vs Nixon* is also a picketing case. People vs Donegan* -- sorry, People vs Cardona is a picketing case.

THE COURT: You don't contend that was picketing.

MISS FINGERHOOD: No no, and People vs Caisan*, a case where a man kept running into a liquor store and shouting abusive language at the owner and the policeman told him not to go back and he went back, but the Court indicated that was a private incident in that the general public as a whole were not involved. It was something which was an argument in which the police were asking the man not to go back in and the liquor store owner personally was annoyed.

THE COURT: Have you finished your motion?

MISS FINGERHOOD: Yes.

THE COURT: Both motions are denied. Both defendants are found guilty of both charges.

*phonetic

Sentence today or tomorrow, or when do you want sentence?

MISS FINGERHOOD: Well, I would like to appeal the Misdemeanor, so I would like my forty-eight hours.

THE COURT: Forty-eight hours granted. The defendants will be fingerprinted. The case is adjourned until Friday for sentence. Are they on bail or parole?

MISS FINGERHOOD: Parole.

THE COURT: Parole continued until Friday as to both. That's Part 2-A on the fourth floor.

****

CERTIFIED TO BE A TRUE AND ACCURATE
TRANSCRIPT OF MINUTES TAKEN IN THIS
CASE BY ME.

Carol M. Wright
CAROL M. WRIGHT
Official Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK
FIRST DEPARTMENT: APPELLATE TERM
..................................x

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

NOTICE OF
ARGUMENT

ROBERT GORE and WALTER FLESCH,
Defendants-Appellants.
..................................x

SIRS:

PLEASE TAKE NOTICE, that the appeal in this proceeding will be brought on for argument before the Justices of the Appellate Term of the Supreme Court of the State of New York, in and for the First Department, at the Court House of the said Appellate Term, 100 Centre Street, in the Borough of Manhattan, New York City, on the 7th day of November, 1966, at the opening of Court on that day, or as soon thereafter as Counsel can be heard.

Dated the 21st day of October, 1966.

Yours, etc.

ROBERT B. SAGINAW
Attorney for Defendants-Appellants
Office & PO Address
545 Fifth Avenue(Rm. 404)
New York, N.Y. 10017
MU 7-0120

TO:
Hon. FRANK S. HOGAN, District Attorney
New York County
155 Leonard Street
New York, N.Y. 10013

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

October 7, 1966

Robert Saginaw, Esq.
3411 Irwin Avenue
Bronx, New York 10463

Dear Bob:

Here are the Minutes in the case of Walter Flesch and Robert Gore. Bob Gore can be reached at Mobilization for Youth (OR 7-0400); Walter Flesch can be reached, if necessary, through John Silverburg (BE 3-7990).

When the Minutes of Sentence arrive I will forward them to you directly.

Please be sure to see People v. Lawson and People v. Collins as to the Sect. 2036 conviction.

Sincerely,

Stephen M. Nagler /eo

Stephen M. Nagler

Enclosure
SMN:eo

Contributions are deductible for income tax purposes

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LUCE, FORWARD, HAMILTON & SCRIPPS
[illegible] San Diego Trust & Savings Building
San Diego 1, California
Phone [illegible]

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff,

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY, an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; RALPH SHACKLEFORD, individually and as Public Relations Chairman, San Diego Chapter of said unincorporated association; JOHN W. PORTER, individually and as a member of the said unincorporated associations; JAMES FARMER, individually and as National Director of said unincorporated association; RICHARD HALEY, Assistant to said National Director of said unincorporated association; JAMES McCANE, individually and as National Director of said unincorporated association; CHET DUNCAN, individually and as Regional Field Director of said unincorporated association; FRED WINSTON, individually and as a member of said unincorporated associations; GEORGE STEVENS, individually and as a member of said unincorporated associations; ROBERT RUSSELL, individually and as a member of said unincorporated associations and as Chairman of CONGRESS OF RACIAL EQUALITY EMPLOYMENT COMMITTEE; JAMES BROWN, JR., individually and as a member of said unincorporated associations; MURIEL BRODSHATZER, individually and as a member of said unincorporated associations; ROBERT A. WARD, individually and as a member of said unincorporated associations; PEGGY FINCH, individually and as a member of said unincorporated associations; JAMES E. BROWN, JR., individually and as a member of said unincorporated associations; ISIE B. FOSTER, individually and as a member of said unincorporated associations; DAVID KROLL, individually and as a member of said unincorporated associations; STANLEY CROCKET, individually

NO. 281182

COMPLAINT FOR INJUNCTION AND FOR DAMAGES and as a member of said unincorporated associations; DOE ONE to DOE ONE HUNDRED (inclusive of all intervening numbers, as though each such Doe was separately and severally designated); DOE I ASSOCIATION to DOE X ASSOCIATION (inclusive of all intervening numbers as though each such Doe Association was separately and severally designated), each an unincorporated association; DOE I CORPORATION to DOE V CORPORATION (inclusive of all intervening numbers as though each such Doe Corporation was separately and severally designated); DOE I PARTNERSHIP to DOE V PARTNERSHIP (inclusive of all intervening numbers as though each such Doe Partnership was separately and severally designated); MRS. ROBERT RUSSELL, individually and as a member of said unincorporated associations;

Defendants.

Plaintiff complains and alleges:

FIRST CAUSE OF ACTION

I

At all times herein mentioned, plaintiff was and now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the city of San Diego, county of San Diego, state of California, and has been and now is duly qualified to do business in said state. Plaintiff is now and all times herein mentioned has been engaged in the business of operating as a public utility within said county and state.

II

Doe One to Doe One Hundred (inclusive of all intervening numbers as though each Doe was separately and severally designated) Doe I Association to Doe X Association (inclusive of all intervening numbers as though each such Doe Association were separately and severally designated), each an unincorporated association consisting of two or more persons; Doe I Corporation to Doe V Corporation (inclusive of all intervening numbers as though each such Doe Corporation was separately and severally designated); Doe I Partnership to Doe V Partnership (inclusive of all intervening numbers as though each such Doe Partnership was separately and severally designated), are and each of them is, and at all times herein mentioned have been parties to the unlawful activities complained of herein, and have been acting in concert with the specifically named defendants with respect to the acts and matters hereinafter alleged and with respect to the unlawful activities hereinafter described. Each reference is to the fictitious name. Said persons, associations, corporations and partnerships are designated herein by such fictitious names because their true names are unknown to the plaintiff and the plaintiff will ask leave to substitute their true names by amendment as soon as their true names are discovered.

III

Defendant, Congress of Racial Equality, is now and was at all times herein mentioned an unincorporated association functioning as an organization to effect, among other things, employment for certain persons, having its principal place of business at New York, New York and doing business in the County of San Diego, State of California. Said defendant is hereinafter sometimes referred to as Defendant CORE.

Defendant San Diego Congress of Racial Equality is now and was at all times herein mentioned an unincorporated association affiliated with the defendant Congress of Racial Equality and functioning as an organization to effect, among other things, employment for certain persons, and doing business in the County of San Diego, State of California. Said defendant is hereinafter sometimes referred to as Defendant San Diego CORE.

Doe I Association to Doe X Association (inclusive of all intervening numbers as though each such Doe was separately and severally designated) were at all times herein mentioned and now are unincorporated associations doing business in the State of Califo

Said unincorporated associations are hereinafter sometimes referred to as the Defendant Unincorporated Associations.

"Defendants" as used herein includes each and every defendant.

IV

At all times herein mentioned, the individual defendants who are sued herein, have held and now hold the office and position or offices and positions in the defendant CORE, in defendant San Diego Congress of Racial Equality or in the defendant unincorporated associations, as is set forth after their respective names in the caption of this complaint, which said caption is incorporated herein by reference with the same force and effect as though fully set forth herein.

The defendant officers, members and representatives are sued herein individually and in their respective official capacities and as representatives of the members of the defendant CORE, defendant San Diego Congress of Racial Equality and the defendant unincorporated associations. All of the members of said defendant CORE, said defendant San Diego Congress of Racial Equality and the said defendant unincorporated associations have not been specifically named as defendants herein because by reason of their number it would be impractical to bring them all before the court. However, the causes of action set forth herein are of common and general interest to each and all of the members of said defendant CORE, said defendant San Diego Congress of Racial Equality and said defendant unincorporated associations.

V

At all times herein mentioned, the plaintiff has owned or leased, maintained possession of and operated in the County of San Diego, State of California, certain hereinafter designated places of business, buildings, facilities and property, together with many others not practical to allege herein, for the purposes of carrying on its business of operating as a public utility. The said places of business, buildings, plants, facilities and properties in the possession of the plaintiff represent a value of more than twenty-five million dollars.

In the conduct and operation of its business in said County and State, plaintiff employs a substantial number of persons, which number at the date of the filing of this complaint is approximately 3,000.

VI.

Plaintiff's main place of business, hereinafter referred to as the Main Office, is located at 861 - Sixth Avenue, City of San Diego, County of San Diego, State of California.

In addition to the said main office, plaintiff owns, leases, maintains possession of and operates in said county and state certain additional places of business, buildings, plants, facilities and properties, including, but not being limited to the following:

(a) Gas and Electric Company garage located on Seventh Avenue between E Street and F Street, City of San Diego, County of San Diego, State of California, which said garage has two entrances, each on Seventh Avenue, with parking lots adjoining the said garage on either side thereof. Each of said parking lots has one entrance.

(b) An Engineering Building located at Seventh and E Streets, City of San Diego, County of San Diego, State of California, the same having an entrance on E Street. Said building is under lease, and under the terms thereof, plaintiff has exclusive right of control and possession of the building lobby on the first floor and the [illegible] through the fifth floors thereof.

(c) An Accounting Building held by plaintiff under lease at Howard Street and Arizona Street in said City, County and State, together with an adjacent parking lot. The Accounting Building has entrances as follows: one from the parking lot, one from Howard Street and one from Arizona Street.

(d) Plaintiff's Station A is located in the vicinity of Ninth Street and Imperial Avenue in said City, County and State, said Station A having many entrances thereto.

VII

On or about November 4, 1963, defendants, and each of them, through their representatives, defendants [illegible] Winston, Robert Russell, James Brown, Jr., Harold Brown, Muriel Brodsheimer and [illegible] W. Barber did, at plaintiff's said main office, submit to plaintiff the following written demands concerning employment of Negroes by plaintiff:

(A) An increase of seven per cent (7%) of total employees which is approximately 3,000, these to be Negro employees on all levels of employment above janitor.

(b) In order to enhance the recruitment of Negro applicants, a listing of job openings be given to CORE.

(c) Provision for in-company training on all levels of employment for new and old Negro employees. Such training shall make upgrading possible.

(d) CORE shall be notified within one week as to any [illegible] plans to meet said demands. In addition to the above mentioned written demands, [illegible] also demanded that plaintiff [illegible] Negro [illegible] to work on the main floor of plaintiff's said main office.

For plaintiff to accede to said demands, or either or any of them, plaintiff would then be required illegally to apply racial or ethnic percentages to the hiring and promotion of its employees and further would require plaintiff illegally to discriminate against other persons within said County and State in its hiring and employment practices.

[illegible]

On December 23, 1963, certain of defendants, members of defendant CORE and defendant San Diego Congress of Racial Equality and members of defendant unincorporated associations, their agents, representatives, employees, picket line captains, and other persons acting under their direction and control and in concert with them and at the invitation of the defendants, and each of them, [illegible] established and caused to be established, and assisted in and maintained at all times since, have maintained and do maintain picket lines and masses of persons at and about the entrances to various of plaintiff's said places of business, buildings, plants, facilities and properties as described above and elsewhere about said places of business, buildings, plants, facilities and properties. Said picket lines and masses of persons have been established and now are and at all times herein mentioned have been [illegible], across and on sidewalks and public thoroughfares and [illegible] under the exclusive control of plaintiff by means of which ingress to and egress from said places of business, buildings, plants, [illegible] and properties must be [illegible].

[illegible]

Said picketing and massing of persons as alleged in paragraph [illegible] [illegible] picket lines and masses of persons [illegible] its [illegible] plaintiff

[illegible] [illegible], to work on the main floor

of plaintiff's said main store.

[illegible] plaintiff to accede to said demands, or either or any of them, plaintiff would [illegible] be required illegally to apply racial or ethnic percentages to the hiring and promotion of its employees and further would require plaintiff illegally to discriminate against other persons within said County and State in its hiring and employment practices.

[illegible]

On December 23, 1963, certain of defendants, members of defendant CORE and defendant San Diego Congress of Racial Equality and members of defendant unincorporated associations, their agents, representatives, employees, picket line captains, and other persons acting under their direction and control and in concert with them and at the invitation of the defendants, and each of them, [illegible] established and [illegible] to be established, and [illegible] have continued at all times since, have maintained and do maintain picket lines and masses of persons at and about the entrances to various of plaintiff's said places of business, buildings, plants, facilities and properties as described above and elsewhere about said places of business, [illegible], plants, facilities and properties. Said picket lines and masses of persons have been established and now are and at all times herein mentioned have been maintained, across and on sidewalks and public thoroughfares and [illegible] under the exclusive control of plaintiff by means of which ingress to and egress from said places of business, buildings, plants, [illegible] and properties [illegible].

[illegible]

Said picketing and massing of persons as alleged in paragraph [illegible] [illegible] picket lines and masses of persons [illegible] established. Said [illegible] to be coercive, insulting [illegible] and threatening to [illegible] and continued to the [illegible] and continue to [illegible] of persons and have [illegible] their conduct and threatening [illegible]

[illegible] the conduct and demeanor of the persons comprising [illegible] have made ingress to and egress from portions of plaintiff's plants, places of business, buildings, facilities and properties, [illegible] difficult and frequently impossible.

The persons comprising said picket lines and masses have created threats and continue to create threats to plaintiff's employees, [illegible], families and other members of the public [illegible] with fear of bodily [illegible]

[illegible] to the [illegible] picket lines, groups [illegible] have congregated and continue to congregate in close [illegible] to the picket [illegible] upon plaintiff's [illegible] frequently [illegible] picket lines.

[illegible] and now are picketing [illegible] egress [illegible] of business, buildings [illegible] property and in [illegible] in [illegible] coercing, and causing fear of physical molestation, reprisal and other injuries to plaintiff's employees, agents, representatives, customers, suppliers, common carriers, visitors, invitees, and others doing business or attempting to do business with plaintiff and plaintiff's respective employees. Said picket lines and masses of persons, in said numbers, demeanor and conduct, have coerced, intimidated, and caused and induced fear of physical molestation, reprisal and other injury to persons, many of whom because thereof have failed to pass through said picket lines. Said persons who conduct business with plaintiff have failed to pass through said picket lines to conduct their business with plaintiff only because of said picket lines and the numbers, demeanor and conduct of said pickets which have caused and induced fear of physical molestation, reprisal and other injury to and coerced and intimidated said [illegible] and preventing the free use of sidewalks and streets and lobby areas and building entrances at, near and about plaintiff's places of business, buildings, plants, facilities and properties.

XI

Defendants and each of them, have established said picket lines and masses of persons as described hereinabove for the illegal purpose of attempting to coerce plaintiff to employ negroes in such number as to constitute seven per cent (7%) of plaintiff's employees at all levels of employment on the basis that negroes constitute seven per cent (7%) of the local population.

XII

Plaintiff has been, since said picket lines and masses of persons were established, and now is, during the times said picket lines and masses of persons are maintained, prevented from conducting part of its business; and the remainder of said business has been and is being conducted only with difficulty because of the acts of the defendants, and each of them, complained of herein.

XIII

Plaintiff is informed and believes and upon such information and belief alleges that defendants, and each of them, and other divers persons unknown to plaintiff, (herein referred to as Doe One to Doe One Hundred, inclusive), unknown to plaintiff have conspired together in court to commit an unlawful act against plaintiff to wit; to interfere with plaintiff in the lawful conduct of its business in order to compel illegal employment practices. Each of the acts complained of herein has been done in furtherance of said conspiracy.

XIV

Defendants and each of them, have performed and continue to perform acts and things herein complained of deliberately, wilfully and intentionally, with the full knowledge of the illegality of said acts and for the purpose of injuring, obstructing and intimidating plaintiff in the conduct of its business. Plaintiff is informed and believes and upon such information and belief alleges that defendants and each of them, will continue to do the acts complained hereof herein unless restrained and enjoined from so doing by this court.

XV

The acts of the defendants and each of them, complained of herein have caused, are causing and will continue to cause, so long as said acts are continued, irreparable damage to plaintiff. As a direct and sole result of said acts plaintiff has been and now is and will continue to be, so long as said acts are continued, unable to carry on its operations properly and efficiently and meet its obligations to members of the public to the substantial extent that plaintiff could otherwise do so; to the contrary, substantial interference with plaintiff's public utility operations will result. Except for the acts herein complained of, plaintiff's operations would not have been so curtailed.

By reason of the facts hereinabove alleged, plaintiff has no prompt or adequate remedy at law, and unless defendants, and each of them, are immediately enjoined and restrained from continuing each and all of the acts herein complained of, plaintiff will suffer irreparable injury.

XVI

The amount of monetary damages to plaintiff's business as a result of the acts of the defendants and each of them, complained of herein is extremely difficult to ascertain, but is not less than $10,000.00 to the date of filing of this complaint. Additional damage will be suffered by plaintiff for each day that the acts continue and plaintiff will ask leave of court to amend its complaint to allege the amount of its damages at such time as they are ascertained. Further monetary and other damage to plaintiff's business as a direct result of said acts complained of herein can only be prevented by the granting of the injunctive relief prayed for herein. Plaintiff upon information and belief alleges that defendants and each of them, herein are incapable of responding in damages in the amount of the accomplished or threatened damage to plaintiff's business.

SECOND CAUSE OF ACTION

I

Plaintiff herein repleads each and every allegation set forth in paragraphs I through XVI inclusive, of the First Cause of Action and, incorporates the same herein as though fully set forth.

II

As a direct result of the acts complained of herein, plaintiff has suffered damages in the amount of not less than $10,000 to the date of the filing of this complaint and additional damages for each day that such acts continue plaintiff will ask leave of court to amend its complaint when the amount of these damages has been ascertained.

WHEREFORE, plaintiff prays judgment against defendants and each of them as follows:

1. That defendants, and each of them and their members, agents, employees, representatives, officers, organizers, attorneys and all persons in active concert or participation with them be permanently enjoined and restrained:

(a) From picketing, standing, sitting, loitering, gathering, lying down, obstructing ingress and egress, assembling, marching, parading, walking, stopping or stationing, placing or maintaining any pickets or other persons, near or about or within 200 yards in any direction from plaintiff's said places of business, buildings, plants, facilities and properties, or in the street or highway, public or private, the use of which is necessary for ingress to or egress from said places of business, buildings, plants, facilities and properties, or on any easements granted to plaintiff or elsewhere at or near or in the vicinity of plaintiff's places of business, buildings, plants, facilities and properties; provided, however, that this shall not be construed to limit in any way the right of any person to enter or leave any of plaintiff's places of business, buildings, plants, facilities or properties in the course of reasonable business with plaintiff; provided, further that not more than two pickets may be in the vicinity of the entrance to plaintiff's places of business, buildings, plants, facilities and properties, and provided, further, that no picket shall be less than 20 feet from any other picket except in passing, and no pickets shall be placed or maintained on property belonging to or in the possession of plaintiff.

(b) From injuring persons or destroying or damag [illegible] erty of plaintiff, plaintiff's employees, or of others, [illegible] engaging in conduct calculated to cause, or causing, [illegible] persons or damage to properties.

(c) From intimidating, threatening, molesting, assa [illegible] pushing, elbowing, shouldering, coercing, or in any mann [illegible] cally contacting the persons or clothing of any of plaintiff [illegible] employees, agents, representatives, visitors, invitees, th [illegible] ployees of customers, suppliers, or others doing or attempt [illegible] do business with plaintiff.

(d) From causing or inducing, or attempting to caus [illegible] induce by word or act any fear or physical molestation, [illegible] or other injury to or on the part of plaintiff's employee [illegible], representatives, visitors, invitees, customers, supplier [illegible] others doing or attempting to do business with plaintiff, or their respective employees.

(e) From obstructing or preventing or attempting to obstruct or prevent plaintiff's employees, agents, representatives, visitors, invitees or customers, suppliers, or others doing or attempting to do business with plaintiff, or their respective employees, from entering or leaving any of plaintiff's facilities.

(f) From threatening, intimidating, molesting by words or acts, or threatening to impose penalty on or to discriminate against plaintiff's employees, agents, representatives, visitors, invitees, customers, suppliers, or others doing business with plaintiff, or their respective employees, for the purpose of preventing or attempting to prevent said persons or organizations from working for or doing business with plaintiff, or as a result of said persons or organizations working for or doing or attempting to do business with plaintiff.

(c) From engaging in threatening, intimidating, loud boisterous talk or shouting or yelling at any of plaintiff's employees, agents, representatives, visitors, invitees, or the employees of or other persons connected with customers, suppliers, or others doing or attempting to do business with plaintiff.

2. That defendants, and each of them, and their agents, employees, representatives, officers, members, organizers, attorneys and all persons in active concert and participation with them, be permanently adjoined and restrained from doing or attempting to do or causing to be done, directly or indirectly, by any means, method or device whatsoever, any of the things or acts set forth in paragraph 1 hereof during the pendency of this action.

3. That the court make an order directing defendants, and each of them, to show cause at a time and place specified in such order why they and each of them shall not be enjoined and restrained during the pendency of this action from doing any of the things or acts set forth in paragraphs 1 and 2 hereof.

4. That a temporary restraining order be granted to plaintiff restraining defendants, and each of them, and their members, agents, employees, representatives, officers, organizers, attorneys, and all persons in active concert or participation with them, pending a hearing on said Order to Show Cause, from picketing, standing, sitting, loitering, gathering, assembling, lying down, marching or maintaining any pickets or other persons at, near or about or within 500 yards in any direction from plaintiff's said places of business, buildings, plants, facilities and properties, or in the street or highway, public or private, the use of which is necessary for ingress to or egress from said places of business, buildings, plants, facilities or properties, or on any property under the plaintiff's ownership or control; provided, however, that this shall not be construed to limit in any way the

right of any person to enter or leave plaintiff's place of business, buildings, plants, facilities or properties in the course of reasonable business with plaintiff, or doing or causing or permitting to be done any of the acts set forth in paragraphs 1 and 2 hereof.

5. That, upon a hearing on said Order to Show Cause, a preliminary injunction be granted, restraining the defendants, and each of them, from doing any of the acts set forth in paragraphs 1 and 2 hereof.

6. For the sum of $10,000.00 actual damages, and for such additional damages as may accrue subsequent to the filing of this complaint.

7. For such costs in this action and for such further and other relief as the court may deem just in the premises.

Dated: , 1963.

LUCE, FORWARD, HAMILTON & SCRIPPS

By:

Attorneys for Plaintiff

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

WALTER A. ZITLAU, being first duly sworn, deposes and says:

That he is an officer, to wit, Executive Vice President of the San Diego Gas & Electric Company, a corporation, the plaintiff in the above entitled action, and that he makes this verification for and on behalf of said corporation and as an officer thereof; that he has read the foregoing complaint for injunction and damages and knows the contents thereof; that said complaint is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and that as to those matters he believes it to be true.

/s/ Walter A. Zitlau
Walter A. Zitlau

Subscribed and sworn to before me this ____ day of December, 1963.

DORIS SCHLOSSER
My Commission Expires Sept. 11, 19

Notary Public in and for said
County and State

People v Stevens, 1888, 109 NY 159, 16 NE. 53

Hewitt v. Newburger 1894, 141 N.Y 538, 36 NE 593

against People v Martinez, 1964, 43 Misc. 2d 94, 250 NYS. 2d 28

good People v Barton 1962 18 A.D. 2d 612, 234 NYS 2d 263

boundary for line People v. Wing 1957, 7 Misc. 2d 803, 163 NYS 2d 995

People v. Leiby 1945, 184 Misc. 21, 52 NYS 2d 493

against People v Goodnoff 1965 45 Misc. 2d 390, 257 NYS 2d 77

DC People v Swald 1947 190 Misc 239, 73 NYS 2d 399

People v. Fury 1927 219 App. Div 747 2nd Dept

Black's Law Dictionary, 4th Edition.

"One who enters upon land without
either right of possession or
color of title",

~~To~~ Enter — impenetrate

Webster's Third New International Dictionary
unabridged

"intrude: to thrust oneself in:
come or go in without invitation,
permission, or welcome: enter
by intrusion."

enter: "to go or come
into a material place: make a
physical entrance or penetration".

People v ~~Lawson~~ Collins 44 Misc. 2d 430,
254 NYS2d 182 - Oct 7 1964 - App Term 2nd Dept
aff'd 16 NY 2d 554, 208 N.E.2d 467
260 NYS2d 662

Ds convicted under 2036 + 722(2)
world's fair picketing

2036

evidence of peaceful picketing in front of Florida Pavilion of New York World's Fair held insuff for both

p183 " While section 2036 of the Penal Law makes it a misdemeanor to intrude unlawfully on the land of another, it does not make it unlawful to remain, after being requested to leave, on premises theretofore lawfully entered. Under the circumstances here, even if the World's Fair grounds be deemed private rather than public, the conviction under section 2036 as it now reads cannot stand without offending the fundamental requirements of due process Bouie v. City of Columbia 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed. 2d 894 (1964)

People v. Lawson 44 Misc. 2d 578 Oct 22,
254 NYS2d 300 App Term, 1st Dept 1964
aff'd 16 NY2d 552, 208 NE2d 466, 260 NYS2d 661

Section 2036 of the Penal Law provides that "[a] person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, ... is guilty of a misdemeanor;

real estate management office maintained by the complainant
Ds refused to leave — arrested

LE

STATE OF NEW YORK vs FLYNN, LUCY et al 1967
("WAIT IN" DEMONSTRATION at DEPARTMENT of LABOR)

Box
Folder 15

ical Society Of Wisconsin

Please Retain Original Order

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART II B

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff
against
LUCY FLYNN, ET AL,
*Defendant*s

Index No.
Calendar No.

JUDICIAL SUBPOENA DUCES TECUM

The People of the State of New York

TO NATIONAL BROADCASTING CO., INC.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* the above entitled court, at 100 Centre Street, N.Y.,N.Y.

on the 8th *day of* March 1967 *at* 9:30 *o'clock, in the* noon, *and at any recessed or adjourned date to give testimony in this action on the part of the*

and that you bring with you, and produce at the time and place aforesaid, a certain tape recording of an interview of Hon. Henry Shimen, former Commissioner of Labor of the City of New York, broadcast over WNBC-TV (Channel 4) at 6:00P.M. on October 13th, 1966.

now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Rubin Levy *one of the* judges *of said Court, at* 100 Centre Street, N.Y., N.Y. *the* 6th *day of* March 1967

Attorney(s) for

Office and Post Office Address

DOCKET NO.	DEFENDANT
B 9563	LUCY FLYNN
B 9564	JUDITH KANAN
B 9565	CATHERINE FRITZ
B 9566	ELINOR KASS
B 9567	JUDITH NAGE
B 9568	STEFANIE OURSLER
B 9571	JOSEPH SPERLING
B 9572	WILLIAM SCHLEICHER
B 9573	SHIAN MacLEAN
B 9574	BERNARD CACCHIONE
B 9575	BARRY GORDON
B 9576	LARRY BERCOWITZ
B 9577	NILS BRUNNER
B 9578	WILLIAM DUDAN
B 9579	SAMUEL MAZEN
B 9580	JAY BITKOWER
B 9581	DENNIS JAMISON
B 9582	MADYLYN MILLER
B 9583	SANDRA KATZ
B 9584	BARBARA SCHECDER
B 9585	JANET SCHLEICHER
B 9586	ELIZABETH KUHN

WITNESSES

Henry Shemin, Commissioner of Labor
91 Worth St.

Philip J. Ruffo
1795 E. 2 St. Brooklyn

Harry Stiefel
832 Avenue Z, Brooklyn

Off. John Christie 4 Pr.

Off. John Zaborowski 4 Pr.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
against
LUCY FLYNN, JUDITH KANAN,
CATHERINE FRITZ, ELINOR KASS,
JUDITH NAGE, STEFANIE OURSLER,
JOSEPH SPERLING, WILLIAM SCHLEICHER,
SHIAN MacLEAN, BERNARD CACCHIONE,
BARRY GORDON, LARRY BERCOWITZ,
NILS BRUNNER, WILLIAM DUDAN,
SAMUEL MAZEN, JAY BITKOWER,
DENNIS JAMISON, MADYLYN MILLER,
SANDRA KATZ, BARBARA SCHECDER,
JANET SCHLEICHER, ELIZABETH KUHN,
Defendants.

BE IT REMEMBERED that I, FRANK S. HOGAN, the District Attorney of the County of New York, by this information, accuse the above-named defendants of the Crime of UNLAWFUL INTRUSION ON REAL PROPERTY, IN VIOLATION OF SECTION 2036 OF THE PENAL LAW, committed as follows:

The said defendants, from on or about October 11, 1966, to on or about October 17, 1966, in the County of New York, unlawfully did intrude upon a certain lot and piece of land, and a building thereon, without authority from the owner, and did intrude upon and occupy the offices of the Commissioner of Labor of The City of New York, without authority.

SECOND COUNT

AND I, THE DISTRICT ATTORNEY AFORESAID, by this information, further accuse the said defendants of the Crime of

COMMITTING A PUBLIC NUISANCE, IN VIOLATION OF SECTION 1530, SUBDIVISION 4, OF THE PENAL LAW, committed as follows:

The said defendants, from on or about October 11, 1966, to on or about October 17, 1966, in the County of New York, unlawfully did commit acts, and omitted to perform a duty, which acts and omission rendered a considerable number of persons insecure in the use of property, by occupying and remaining in the offices of the Commissioner of Labor of The City of New York with bedding articles and cooking utensils, without authority, and by reason of such acts and occupancy did disrupt and interfere with the official, orderly and lawful business and routine of said commissioner and his employes.

THIRD COUNT

AND I, THE DISTRICT ATTORNEY AFORESAID, by this information, further accuse the said defendants of the Crime of DISORDERLY CONDUCT, IN VIOLATION OF SECTION 720 OF THE PENAL LAW, committed as follows:

The said defendants, from on or about October 11, 1966, to on or about October 17, 1966, in the County of New York, at the premises 93 Worth Street, in the offices of the Department of Labor of The City of New York, unlawfully did annoy and interfere with the employes and persons therein by offensive and disorderly acts and language.

FRANK S. HOGAN,
District Attorney.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART II- B

PEOPLE OF THE STATE OF NEW YORK

-against-

LUCY FLYNN, and twenty-one others,

Defendants,

DEFENDANTS' MEMORANDUM OF LAW

RICHARD A. MARLOW
Marlow, Marlow & Marlow
70 Middle Neck Road
Great Neck, N.Y.

STEPHEN M. NAGLER
RM. 1030
150 Nassau Street
N.Y., N.Y. 10038

ATTORNEYS FOR DEFENDANTS

SUMMARY OF ARGUMENT

POINT I	SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY
POINT II	A PUBLIC NUISANCE UNDER NEW YORK LAW REQUIRES CONDUCT BY AN INDIVIDUAL TO CAUSE SUBSTANTIAL, UNREASONABLE, UNLAWFUL, AND INDISCRIMINATE INJURY OR INTERFERENCE TO THE GENERAL PUBLIC. SECTION 1530 OF THE PENAL LAW MAINTAINS THE COMMON LAW DISTINCTIVE BETWEEN PUBLIC AND PRIVATE NUISANCE
POINT III	TO BE A PUBLIC NUISANCE CONDUCT MUST BE HABITUAL OR PERMANENT, AND SUBSTANTIAL

POINT I

SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY.

Under the modern cases, it has been established that an unauthorized entry is necessary before section 2036 can be violated. (See PEOPLE V. LAWSON, 44 Misc. 2d 578,254 N.Y.S. 2d 300 (1964) aff'd 16 N.Y. 2d 552,260 N.Y.S. 2d 661,208 N.E. 2d 446 (1965) and PEOPLE V. COLLINS, 44 Misc. 2d 430,254 N.Y.S. 2d 182 (1964) aff'd 16 N.Y. 2d 554,260 N.Y.S. 2d 662,208 N.E. 2d 467 (1965)). A refusal to leave property that has been lawfully entered is definitely not a crime under § 2036.

Thus, in LAWSON, the Supreme Court, Appellate Term, First Department said per Judge Gold: "In this court's opinion, section 2036 ... in clear and unambiguous language, makes criminal only an unauthorized entry upon real property. It does not purport to make criminal a refusal to leave property which has been lawfully entered." PEOPLE V. LAWSON, 44 Misc. 2d 578 at 580,254 N.Y.S. 2d 300 at 302 (1964). The Supreme Court, Appellate Term, Second Department said the same thing in the COLLINS case: "While section 2036 of the Penal Law makes it a misdemeanor to entrude unlawfully on the land of another, it does not make it unlawful to remain, after being requested to leave, on premises theretofore lawfully entered." PEOPLE V. COLLINS, 44 Misc. 2d 430 at 431,254 N.Y.S. 2d 182 at 183 (1964).

On appeal the Court of Appeals affirmed both decisions on the basis of the Appellate Term opinion. Since "intrude" has been defined as "enter", a different interpretation, in the light of the statutory provision's language, might render the provision unconstitutional as applied because it would not give fair warning of the proscribed conduct. As the Supreme Court has said: "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." BOUIE V. CITY OF COLUMBIA,378 U.S. 347 at 351 (1964) (quoting from UNITED STATES V. HARRISS, 347 U.S. 612 (1954)).

It is significant that several states have statutes which explicitly state that either "intruding" or "remaining" on property against the will of the owner shall be a crime. e.g. Louisiana: LOMBARD V. LOUISIANA 373 U.S. 267 (1963); Florida: ROBINSON V. FLORIDA, 378, U.S. 153 (1964).

The staff comments concerning the new "real estate crimes" (Art. 1 new New York Penal Law) fully recognize the gap in the present statutes:

> "When a person enters a building unlawfully but with no intent to commit a crime therein, or there is no evidence of such intent, the offense of burglary is not established. In cases where it is not probable that an intruder entered with the requisite intent, appropriate criminal sanctions should be available. The trespass provisions in the existing Penal Law Sections 1425(9), 2036) however, are at best ill-defined and narrow in scope PEOPLE V. STEVENS, 109 N.Y. 159, 16 N.E. 53 (1888). The proposed penal law corrects these deficiencies

by presenting in three degrees a new definition of the offense of 'criminal trespass'..."

POINT II

A PUBLIC NUISANCE UNDER NEW YORK LAW REQUIRES CONDUCT BY AN INDIVIDUAL TO CAUSE SUBSTANTIAL, UNREASONABLE, UNLAWFUL,AND INDISCRIMINATE INJURY OR INTERFERENCE TO THE GENERAL PUBLIC. SECTION 1530 OF THE PENAL LAW MAINTAINS THE COMMON LAW DISTINCTIVE BETWEEN PUBLIC AND PRIVATE NUISANCE.

Section 1530 of The Penal Law of New York is a verbatim derivative of its precursor section 385 of The Penal Code of 1951:

> A "public nuisance" is a crime against the order and economy of the state and consists in unlawfully doing an act, or omitting to perform a duty,which act or omission:
>
> 1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of person;or
> 2. Offends public decency; or
> 3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway:or
> 4. In any way renders a considerable number of persons insecure in life, or the use of property.

Section 385 was taken from section 430 and 431 of The Draft Code, prepared by the Field Commission and submitted to the legislature in 1865. The reports of the Field Commission indicate that they intended only to codify and harmonize existing laws and practice. People V.Transit Development, 131 App. D.V. 174, 115 N.Y. Supp.297 (1909)

The common law definition of public nuisance, applied in New York requires interference with the rights of the public at large. This is to be contrasted with a private nuisance, which is an act directed against an individual or group of individuals, and is founded on the violation of a private right. People on Complaint of Scheinberg V. Churin (City Ct. 132 NYS 2d 568 (1952)

A typical case of public nuisance involves the use of ones property to cause injury to the public, as where a factory allows odors to emanate from its premises which cause a permanent or habitual disturbance to the surrounding area. A second example involves an individual who endangers the general public by erecting a physical barrier that blocks access to a public highway. The public injury may be to persons or property, to health, comfort, safety or morality. Melker V City of N.Y. 190 N.Y. 481,83 NE.565 (1908). In any case it must be a public injury.

Conversely, if the infringements were on individuals working in a private office, the inconvenience would most surely be an invasion of a private right. The crucial factor is how the infringement takes place, whether it is indiscriminate in its operation or selective. This destruction between public and private nuisance has always been followed by courts interpreting section 1530 § and its predecessors.

A"considerable numberoof persons" as specified in section 1530 does not imply a particular number; rather it refers to the common law distinction between public and private nuisance. As Justice Cordoso said in People V. Rubenfield 254 N.Y. 247 (1930)

> " To be reckoned as "considerable
> the number of persons affected
> need not be shown to be very great.
> Enough that so many are touched by
> the offense and in ways so indiscriminate
> and general that the multiplied
> annoyance may not unreasonably be
> classified as a wrong to the community.
> Public is the nuisance whereby 'a
> public right or privilege common to
> every person in the community is
> interupted or interferred with' as
> by the obstruction of a public way."

In Rubenfeld the defendant operated a 3 story catering establishment where "dances, weddings and other entertainments, one on each story, beginning in the evening and continuing till dawn" were habitually conducted. "The sounds of revelry by night, to the accompaniment of drums and basses assail the quiet of the vicinage.... A traveler on the highway heard the noise a block away." In afferming the conviction the Court said further:

> "We think the area of this tumult,
> the range of its disturbing power,
> is wide enough to bring it within the
> category of an offense to the community."

POINT III

TO BE A PUBLIC NUISANCE CONDUCT MUST BE HABITUAL OR PERMANENT, AND SUBSTANTIAL

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The phrase "act against the order and economy of the State" indicates the breadth of the injury required by Sec.1530. Furthermore, in order to be punishable under sec. 1530, the conduct must be "systematic and exclusive" (*Flynn V. Taylor*, 127 N.Y. 596 (1891)), "permanent or habitual "(*Davis V. The Mayor of New York*, 14 N.Y. 506 (1856) or "permanent and recurrent " (*Callanan V. Gilman*, 107 N.Y. 360 (1887)) and must in any event constitute a "substantial impairment" (*Graceland Corp. V. Consolidated Laundries Corp*. 7AD 2d 89 (1958)). A purely localized series of acts, known to be temporary in nature and possibly resulting in a mere inconveniencing of a few individuals could not constitute a public nuisance. The novel extension and application of such statutes may result in rendering them "void for vagueness" in violation of the due process clause of the 14th Amendment.

Respectfully submitted,

Richard A. Marlow
Stephen M. Nagler
Attys. for Defendants.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

LARRY JACK BERCOWITZ, being duly sworn deposes andd says:

1. I am one of twenty-two defendents in a case entitled People v. Joseph Sperling, et. al. All of the defendents, including myself are charged with violating 1530 (Docket numbers B-9561--9568/66) and 2036 (Docket numbers B-9571--9586/66) of the Penal Law.

2. This case has been on the calender approximately seven times since October, 1966, when I was arrested. I have been present on every occasion on which the case was called, except the last. On the last occasion I was not present because all the defendents had been excused from appearing. The case will be on the calander of the Criminal Court of the City of New York, County of New York, Part II B-1 on Friday, May 12, 1967.

3. I regret that it will be impossible for me to be present before the Court on May 12, 1967. A relative, who is close to me and who resides in San Francisco, California, and of whom I am the sole support has just desperately taken ill and I have been requested to join her. I have sub-leased my apartment at 510 East 12th Street, #8, N.Y.,N.Y., 10009 for the summer and have resigned from my employment at the Department of Welfare, City of New York. I have secured transportation without cost with a friend who is driving West on May th, 1967. Any other means of transportation would be beyond y means and would render it more difficult for me to support yself and my aunt, as I will be delaying my arrival.

4. I hold myself available to the orders of this Court and apologize for my failure to appear on May 12, 1967. I authorize my attorney to act in my behalf, in all respects.

5. I respectfully request that my case be adjourned to September 20, 1967. by which time I expect to be back in New York.

Larry J. Bercowitz

Larry Jack Bercowitz

SWORN TO BEFORE ME
THIS 4th DAY OF MAY, 1967

CARL RACHLIN
Notary Public, State of New York
No. 24-3192700
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 19

AFFIDAVIT

STATE OF NEW YORK)
SS. :
COUNTY OF NEW YORK)

BARRY GORDEN, being duly sworn, deposes and says:

1. I am one of twnty-two defendants in a case entitled People, etc . v. Joseph Sperling, et al.. All of the defendants, including myself, are charged with violating section 1530 (Docket numbers B-9563-9568/66) and section 2036 (Docket numbers B-9571-9586/66 of the penal law.

2. This case has been on the calender approximately seven times since October, 1966, when I was arrested. I have been present on every occasion on which the case has been called, except one on which all of the defendants had been excuded from appearing, by Hon. Arthur Braun, Judge of the Criminal Court. The case will next be on the calender of the Criminal Court of the City of New York, County of New York, Part II-B, on Monday, May 22nd, 1967.

3. I regret that it will be impossible for me to be present before the court on May 22nd, 1967. For several years, I have been engaged to a girl from Dornbirn, Vorarlberg, Austria, by the name of Vera Frapporti and we have been planning to marry in Great Britain this month. Six months ago, I made a reservation on a "group" flight sponsored by my college alumni association. My ticket was purchased and paid for in the expectation that this matter would be disposed of long before now. I am in no way responsible for the long delay in disposition of this case, and hold myself available to ~~may~~ any and all orders of the Court affecting me. The flight will return on or about October 1st, 1967. If I were to delay my departure, I would lose a substantial part of the price of my ticket, I would have to make alternate arrangements far beyond my means, and my marriage plans would have been completely disrupted.

(continued)

4. As stated above, I hold myself available to any and all orders of this Court and sincerely apologize for my failure to appear on May 22nd, 1967.

5. I authorize my attorney to act in my behalf in all respects involved in this case.

6. I respectfully request that my case be adjourned to October 4th, 1967.

Barry Gorden

BARRY GORDEN

Sworn to before me
this 12th day of May, 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1969

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2B1 : COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

LUCY FLYNN, JUDITH KANAN, KATHERINE FRITZ, ELINOR KASS, JUDITH NAGE, STEPHANIE OURSLER, JOSEPH SPERLING, WILLIAM SCHLEICHER, SHIAN McCLEAN, BERNARD CACCHIONE, BARRY GORDON, LARRY BERCOWITZ, NILS BRUNNER, WILLIAM DUDAN, SAMUEL MAZEN, JAY BITKOWER, DENNIS JAMISON, MADYLYN MILLER, SANDRA KATZ, BARBARA SCHECDER, JANET SCHLEICHER, and ELIZABETH KUHN,

Defendants.

Docket Nos.
B9563-B9568
B9571-B9586

Charge: Sections 2036 and 1530, Subdivision 4, of the Penal Law

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April 20, 1967
100 Centre Street
New York, New York

BEFORE: HON. SIMON SILVER
Judge

APPEARANCES:

FOR THE PEOPLE:
DANIEL MARKEWICH, ESQ.
Assistant District Attorney

FOR THE DEFENDANTS:
MESSRS. MARLOW, MARLOW & MARLOW
70 Middle Neck Road
Great Neck, L.I., New York
BY: RICHARD A. MARLOW, ESQ.

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC.
150 Nassau Street
New York, New York
BY: STEPHEN NAGLER, ESQ.

PRESENT:

J. D. RANKIN, ESQ.
Corporation Counsel
BY: JOSEPH A. ESQUIROL, JR., ESQ.
Assistant Corporation Counsel

COURT OFFICER:
Kiernan Johnston

Thomas J. Landers, C.S.R.
Official Court Reporter

* * * *

COURT OFFICER: Calendar 17. State your name, Counselor.

MR. MARLOW: Marlow, Marlow & Marlow, 70 Middle Neck Road, Great Neck, Long Island, by Richard A. Marlow.

MR. NAGLER: Stephen N. Nagler, 150 Nassau Street, New York.

MR. MARKEWICH: May the record note an appearance by, Counselor.

MR. ESQUIROL: J. D. Rankin, Corporation Counsel, by Joseph A. Esquirol, Jr.

MR. MARKEWICH: Your Honor, the last time this matter was on, Mr. Marlow, before Judge Braun, offered to waive the appearance of all defendants at any future proceedings in this matter.

THE COURT: I don't go along with that.

MR. MARKEWICH: Well, as I understand it, Judge Braun at that time went along with it. I had nothing to say about that.

MR. MARLOW: I disagree, you consented to it.

MR. MARKEWICH: It's my recollection, although I would have to see the minutes, that I said absolutely nothing because I believe Mr. Marlow had the right to do it and it didn't call for my consent. In any case, the situation is presently different from what it was on that date and although I did, yesterday, have a conversation with Mr. Nagler, Mr. Marlow's co-counsel, in which I advised him that pursuant to what Judge Braun had stated, it seemed to me, especially since the case could not proceed to trial today, that the defendants might as well not appear today.

THE COURT: That part is all right.

MR. MARKEWICH: They are not here today. And I, of course, went along with that. However, we're now in a different posture with the case. There has now been filed, as Your Honor will note from a look at the papers, a superseding District

Attorney's information which replaces the original complaint in the case.

The original complaint in the case charged the defendants with crimes of unlawful intrusion on real property in violation of Section 2036, public nuisance in violation of Section 1530, Subdivision 4, only those two charges.

The District Attorney has now filed a supeseding District Attorney's information which indicates those two charges but in addition adds a count of the misdemeanor of disorderly conduct in violation of Section 720 of the Penal Law.

Now, under those circumstances, Your Honor, we would have to ask that, although, perhaps, these defendants could waive their appearance at any future proceedings with regard to the original complaint, that they must appear before the Court to be arraigned on this new information. If they will appear voluntarily on the next occasion, if their counsel so agree, there will be no difficulty whatsoever.

Otherwise, I would ask, unless counsel can assure their appearance on the next occasion, that this Court issue Bench Warrants to insure their appearance on the next occasion.

THE COURT: Oh, I'm sure that counsel will see to it that they appear.

MR. MARLOW: I'm not certain that that's the case, Your Honor.

May I be heard?

THE COURT: You may.

MR. MARLOW: We had a full and complete hearing on the first two counts of this new superseding information.

MR. MARKEWICH: Here are the minutes; that's correct.

MR. MARLOW: And at that hearing an application was made to Judge Levy to amend the complaint and add additional counts. Judge Levy said, no. No, entirely for the reason that to do so--

THE COURT: I really don't want to know the reason because the Grand Jury has a right--

MR. MARKEWICH: This is a District Attorney's information.

MR. MARLOW: That is a District Attorney's information.

MR. MARKEWICH: Not one ordered by the

Grand Jury.

MR. MARLOW: And I would like a full and complete record in this matter, if I may.

MR. MARKEWICH: Certainly.

MR. MARLOW: At that time Judge Levy pointed out to do as the District Attorney had urged would force the defendants to waive their rights to a hearing on these additional charges.

Now, we are entitled to a hearing on all the charges before the Court. And to do what the District Attorney is urging here is to force us to waive a right. That is No. 1.

No. 2--

THE COURT: Hold No. 1. I don't agree. There was a hearing. All the testimony is there. There will be no additional testimony.

MR. MARLOW: I don't know about that. Well, I don't know about that.

The charges under 720 are different than a public nuisance.

THE COURT: Whatever it is, it is in here.

MR. MARLOW: No, that's not so. I was very much proscribed in what I could examine into. I was limited to the charges before the Court and I could not inquire as to anything beyond what was before the Court at that moment. And now an additional charge has been added. Now, I do not know that the elements that make up the first two counts of the indictment are the same as to this additional count.

THE COURT: You have the minutes, haven't you?

MR. MARLOW: I do not have the minutes with me now. I do not know the full details of this additional count. It has just been told to me. I do not waive my right to a full hearing.

THE COURT: But whether or not you're entitled to a further hearing has nothing to do with what's before me today, so let's pass on to the next thing.

MR. MARLOW: I'm not waiving my right to a hearing. I'm demanding a hearing on this additional charge.

Second of all--

THE COURT: I'm not passing on it.

MR. MARLOW: Second of all, I have not been retained by my clients to represent them on anything other than what was before this Court.

THE COURT: You will not?

MR. MARLOW: I will not represent them on anything that I have not been retained.

THE COURT: Suit yourself.

MR. MARLOW: Third of all, this is an improper way to proceed. In filing a District Attorney's information it must be sworn to before a judge and verified before a judge, and if the District Attorney will look at the Code of Criminal Procedure he will find that to be the case. Now, if the District Attorney is making himself the complainant in this matter, I want to know that fact. If not, I should point out to the Court that the actual complainant in this matter has not been before this Court for the last three appearances.

Now, this matter has been on the calendar eight times. And I am aware of the fact that Your Honor is most interested in the expeditious handling of your calendar, and should a defendant bring up new matter after it appears on the calendar, I am certain that Your Honor would not permit it and I see no reason to allow the District Attorney to file an additional charge, eight months after the incident in question.

THE COURT: What new matter could the defendant bring up?

MR. MARLOW: Whatever new matter it might be.

THE COURT: You're just--

MR. MARLOW: Insanity, Your Honor. That's a new matter.

THE COURT: You shouldn't possibly stop him. You shouldn't possibly stop him. What do you say about that? The only feature that I want an answer on from you with respect to what he said is whether or not under the Code you have the right to do it the way you did it without yourself being the complainant.

MR. MARKEWICH: May I correct the record just briefly before I make that answer? Only by quoting from the minutes.

THE COURT: In what respect?

MR. MARKEWICH: Only with regard to the fact that although I know the Court has stated it is immaterial today, I would like the record to be correct, that on page 109 of the minutes of the hearing, the Court stated to Mr. Gallina, then the District Attorney on this matter, "I would suggest, if you feel that enough has been brought out to warrant the lodging of additional charges that you lodge them through the medium of new affidavits."

MR. MARLOW: That's correct; not a superseding complaint.

MR. MARKEWICH: That's not as Mr. Marlow stated before, that the judge stated that we could not bring any new charges. He didn't make any such statement.

MR. MARLOW: I disagree. The argument before the Court was to amend the complaint and he said, no, bring a new complaint but not a superseding one.

Then we're forced to waive our rights.

THE COURT: He can't tell the District Attorney what to bring. If what the District Attorney brought follows the law, he has a perfect right to do it but I will hear you on that phase.

MR. MARKEWICH: Now, on the phase of the law, frankly, on the question of whether a District Attorney's information has to be sworn to before a judge, I would have to defer to higher authority in my office and if that matter disturbs Your Honor, I would ask for a brief second call so that I could have Mr. Stone come down.

MR. MARLOW: We've already had a brief second call.

MR. MARKEWICH: I would note--

THE COURT: Look, Counselor, I'll put this over to 4:00.

MR. MARLOW: What can I do about that?

THE COURT: If I'm going to hold it for second call, I'll hold it for second call. Don't tell me we've already had a second call.

MR. MARKEWICH: I believe Section 145 of the Code of Criminal Procedure deals with statutes of limitation, if I'm correct.

MR. NAGLER: It deals with the filing of an information.

MR. MARLOW: 145 of the Code of Criminal Procedure.

THE COURT: You say that that section prohibits the District Attorney from doing what?

MR. MARLOW: No, I say the information must be sworn to and verified before the Court and the complainant; it's a question of who swears to it.

THE COURT: Any information, Counsel, for your information, an information--neither an information nor an indictment is sworn to. A complaint is sworn to.

MR. MARLOW: A District Attorney's information.

MR. MARKEWICH: May we have just a moment, I believe the Court Clerk--

THE COURT: I haven't heard about it in 20 years but I would like to learn.

MR. NAGLER: Your Honor, an additional point on this.

THE COURT: Certainly.

MR. NAGLER: Approximately five to eight months, I'm not sure of the exact time, after the arrest of these defendants took place, the District Attorney is attempting to suddenly add an additional charge.

Certain discussions were had. It was my information--

THE COURT: When was the hearing had?

MR. NAGLER: December or January.

And that it was sometime after the arrest took place. Now, suddenly, the discovery of a new charge takes place, at least, two months after the hearing and after two or three other occasions on which this case has been on the calendar. In discussions had with me, Counselor, the question of raising disorderly conduct as an offense was raised.

THE COURT: Counselor, one moment.

This is not an application made to me for permission to file a superseding information.

MR. NAGLER: Your Honor, I believe what Mr. Marlow is referring to by the statute is that we wish to make a countermotion for dismissal for failure to prosecute.

THE COURT: Who is going to stop you?

MR. NAGLER: The motion is made, Your Honor.

THE COURT: Which--

MR. NAGLER: I've just made it.

THE COURT: I don't take oral motions.

MR. MARKEWICH: Your Honor, as to 145, if I may read the relevant paragraph to Your Honor it states, Subdivision 1:

"The information is the allegation made to a magistrate that that person has been guilty of some designated crime."

MR. MARLOW: Keep reading.

MR. MARKEWICH: Certainly. The other part of it deals with allegations of prior conviction. I believe that there is a section of the Criminal Court Act which refers to the kind of information--

THE COURT: What I think you ought to do, gentlemen, if you want to get a ruling on your objections here, is to move to set aside or vacate or whatever other thing the Code may provide, this superseding information.

Then you're in a position to have the Court pass upon whether or not they have a right to supersede, whether they're in time, whether they're too late, whether laches has set in and so forth.

MR. MARLOW: Your Honor, that might be but then we raise the question all over, again, whether I represent anyone on the new information.

THE COURT: That's your business.

MR. MARLOW: I think it's also the People's because it's going to also raise a question of liability for a second arrest when they have failed to prosecute on the first arrest.

MR. MARKEWICH: It isn't a second arrest.

MR. MARLOW: This is what's happening. May I point out, Your Honor, this matter has been on the calendar nine times. And now, all of a sudden, for the first time they've decided that they don't have a case under what they arrested them on.

THE COURT: They have never said anything like that; I haven't heard that.

MR. MARLOW: Ask him, he'll tell you.

MR. MARKEWICH: What was that? No, what we do feel is that a charge of disorderly conduct ought to be in the complaint.

As to the rest of it, it will have to be up to a judge. I do note that Judge Levy already held that there was a prima facie case with regard to the other two charges.

THE COURT: Now, Counsel, look, if time is what you are complaining about, why your people were excused, I don't know.

MR. MARLOW: Why were they excused?

Because on every demonstration case in New York County, as a means of harassment, and

I say that most genuinely and most honestly, as a means of harassment, they are required to come back before this Court 10, 11, 14, as many as 17 times before they are given a trial. And I try an awful lot of these demonstration cases.

Therefore, my clients, as they are entitled to do, under the Code of Criminal Procedure, and may I most respectfully point out to the Court that it doesn't require the permission of the Court, nor the permission of the District Attorney, it is their right not to be present at any part of the proceeding--

THE COURT: Anytime you leave them home, I will issue Bench Warrants for them. So don't try that with me.

MR.MARLOW: All right, and if I bring in affidavits in which they have waived, all we do is we have a matter to appeal to the Appellate Division to determine. But there are cases from the Court of Appeals which already hold that to be the case, Your Honor, I most respectfully submit.

THE COURT: Very well.

MR. MARLOW: Now, in an attempt to avoid this harassment--

THE COURT: Then you should have had them here today. They could have gone to trial on this.

MR. MARLOW: Their appearance has been excused, waived, and they do not want to be present.

MR. MARKEWICH: I'm not disturbed that they are not here today. May I just say the following:

First of all, personally, I wouldn't harass anybody.

Secondly--

MR. MARLOW: May I point out it was not Mr. Markewich. He has just come on the case.

MR. MARKEWICH: Secondly, may I note with regard to the alleged harassment, at the time of the hearing all the defendants were excused except one who sat in during the hearing. So that doesn't seem to amount to harassment.

Thirdly, may I note that while the law does tend to indicate that, perhaps, defendants can be excused on their own motion at the time of a trial, or at the time of a motion, etc., although, of course, the District Attorney may have them produced to be identified and for such purposes, nevertheless, the law is also relatively clear that in a misdemeanor situation, the defendant has this duty to appear to be arraigned.

Now, that we have a superseding information.

MR. MARLOW: He has to appear to be arraigned?

MR. MARKEWICH: Yes.

MR. MARLOW: Have you served anyone with an information, yet?

MR. MARKEWICH: The information has been laid before a magistrate.

MR. MARLOW: But has it been served on the defendants? They don't know anything about it.

MR. MARKEWICH: Now, their counsel represent them and they, now, can learn about it.

MR. MARLOW: I didn't say I represent them on this information.

MR. MARKEWICH: May I then be heard just

once more?

THE COURT: No, just give me a date. And I am directing that their waiver will not be recognized as permission not to appear.

MR. MARLOW: I most respectfully except to that and require a sufficient length of time to file my intention to appeal from Your Honor's ruling.

MR. MARKEWICH: What date?

MR. MARLOW: I want one month to perfect an appeal.

THE COURT: You will have one week in which to--

MR. MARLOW: I cannot perfect an appeal in one week.

THE COURT: You can't perfect it in a month, either.

MR. MARLOW: Oh, yes, I can.

THE COURT: Oh, no, you can't.

MR. MARKEWICH: If it is a satisfactory date to the defendants, the People--

MR. MARLOW: We're not appearing on that information.

MR. MARKEWICH: That's good. I would

request the date of May 10th. May I note to the Court at the hearing Mr. Marlow at one point withdrew from the hearing, also, but then he came back. If you will note page 44 and page 45.

MR. MARLOW: I withdraw from things all the time, Mr. Markewich. If you want a complete record, you indicated to me you had no case on the first two counts.

MR. MARKEWICH: I had strong doubts as to them but since the judge already passed on them at a hearing--I was not involved in the case at the time--we will have to have a judge pass on them at trial. There is a third count now.

The 11th?

POLICE OFFICER: Yes.

MR. MARKEWICH: Why not the 11th, if you're going to file a notice of appeal?

THE COURT: I'm waiting for a date.

MR. MARLOW: Your Honor, I want to set this down for a motion, first, to dismiss since you seem not to want to accept an oral application. This is most unusual.

THE COURT: Just give me a date. You make your motion. I'm not going to make arrangements for your motion. You make your motion. What date? Let's get a date.

MR. MARKEWICH: Mr. Nagler seems to agree to May 11th, if I'm not wrong.

MR. NAGLER: Just a moment.

I'd like to confer, if I have a moment.

MR. MARKEWICH: May I note while we are going through this--

THE COURT: Wait a minute, I haven't got a date yet.

MR. MARKEWICH: The 12th, the 19th, the 26th.

MR. MARLOW: The 12th.

MR. MARKEWICH: All right, the 12th.

That's agreeable to the People.

MR. MARLOW: May the record respectfully reflect that I do not appear for anyone on this superseding information.

MR. MARKEWICH: Then they will be without counsel.

THE COURT: What are you doing here?

MR. MARLOW: I'm here on what's on the record and what's on the calendar today. The things they were arrested on months ago.

MR. MARKEWICH: These supersede on the--

MR. MARLOW: My clients have not been served, yet, so nobody supersedes anything.

MR. MARKEWICH: I believe counsel is writing his own Code of Criminal Procedure.

MR. MARLOW: It's not valid until served.

THE COURT: I don't know where you get your information from but if that's your information, you act on it.

MR. MARLOW: The Code of Criminal Procedure, Your Honor.

THE COURT: May 12th--I see nothing on the papers indicating the excuse of any defendants.

MR. MARKEWICH: They were excused last time, that I know.

THE COURT: I'm not denying they were excused.

MR. MARKEWICH: Pardon me, Your Honor?

THE COURT: I merely say that I see nothing on the papers here, that indicates such an excuse.

However, I will make a notation that any excuse that may have been given is revoked.

MR. MARLOW: May I know the ground for that, Your Honor?

THE COURT: I told them to you several times.

MR. MARLOW: I'd like the record to be clear and complete.

THE COURT: Buy the record and you'll have it.

MR. MARLOW: I don't think the record reflects what your reason is for that.

THE COURT: What--May 12th.

MR. MARKEWICH: May 12th.

MR. NAGLER: Your Honor, may I further point out that the defendants were excused by Judge Braun in this same Court and that you are revoking--

THE COURT: I am?

MR. NAGLER: --the decision of another judge.

THE COURT: You're right.

MR. NAGLER: Rather than referring it back to the judge that excused the defendants.

THE COURT: Yes.

MR. MARKEWICH: The People would further note the fact of the superseding information and that changes the facts before the Court, in any event.

MR. NAGLER: Shall we change any of the defendants?

MR. MARKEWICH: No, except to respell Mrs. Mage's name.

MR. MARLOW: I think it would be proper if I get served.

THE COURT: Had they been paroled up to now?

MR. NAGLER: Yes, Your Honor.

THE COURT: None of them were on bail?

MR. NAGLER: No.

THE COURT: Apparently, I see "bail continued" here by somebody.

Has anyone been on bail?

MR. NAGLER: That was an error, Your Honor. They've all been paroled.

THE COURT: All right. Parole continued until May 12th.

MR. NAGLER: Your Honor, while we're at it, Your Honor--

MR. MARLOW: Would the Court respectfully grant me the right to serve the complainant with a subpoena pursuant to the mandate of this Court since the complainant doesn't seem to want to be here and hasn't been here for the last three times.

THE COURT: Why do you need a subpoena from me?

MR. MARLOW: Well, I think someone ought to have the complainant here, so we can proceed, Your Honor.

THE COURT: As soon as you are ready to go to trial.

MR. MARLOW: We're ready today, Your Honor.

THE COURT: All right, get your defendants in and I will send you to a Part.

MR. MARLOW: My defendants were waived today. I am ready, though.

MR. MARKEWICH: All right, May 12th, then, I gather, is the agreed-upon date.

I will attempt to get a copy of this information to the defendants, that is, the defendants' counsel. I think they're certainly entitled to it. I note that Mr. Marlow, who claims not to be representing the defendants, has requested a copy.

THE COURT: Serve, under the Code of Criminal Procedure, whomever you're supposed to serve.

MR. MARKEWICH: Fine. I will serve this copy; I assume we can serve another one on co-counsel. I believe they are co-counsel.

MR. MARLOW: We accept service without indicating or admitting our representation of these defendants before this Court on this matter.

THE COURT: Very good. So noted.

MR. MARLOW: Thank you, Your Honor.

This is to certify that the above is a true and correct transcript of the minutes taken at the above proceeding.

Thomas J. Landers, C.S.R.
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2B(1) - COUNTY OF NEW YORK

- x

The People of the State of New York	:	Calendar #35
vs.		
	:	
LUCY FLYNN		
JUDITH KAHAN (KANAN)	:	Docket # B-9563/66
CATHERINE FRITZ		B-9564/66
ELINOR KASS	:	B-9565/66
JUDITH MAGE (NAGE)		B-9566/66
STEFANIE OUSLER	:	B-9567/66
		B-9568/66
Defendants	:	
		2036 P.L.
	:	1530-4 P.L.

- x

- - -

The People of the State of New York	:	Calendar #36
vs.		
	:	
JOSEPH SPERLING		
WILLIAM SCHLEICHER	:	Docket # B-9571/66
SHIAN MAC LEAN		B-9572/66
BERNARD CACCHIONE	:	B-9573/66
BARRY GORDON		B-9574/66
LARRY BERCOWITZ	:	B-9575/66
NILS BRUNNER		B-9576/66
WILLIAM DUDAN	:	B-9577/66
SAMUEL MAZEN		B-9578/66
JAY BITKOWER	:	B-9579/66
DENNIS JAMISON		B-9580/66
MADYLYN MILLER	:	B-9581/66
SANDRA KATZ		B-9582/66
BARBARA SCHECDER	:	B-9583/66
JANET SCHLEICHER		B-9584/66
ELIZABETH KURN	:	B-9585/66
		B-9586/66
Defendants	:	
		2036 P.L.
	:	1530-4 P.L.

- x

Preliminary Hearing

100 Centre Street
New York, New York

DECEMBER 19th, 1966

Before:

HON. REUBEN LEVY,
Judge of the Criminal Court

Appearances:

For People: GINO GALLINA, ESQ.
Asst. D. A.

For Defendants: MARLOW, MARLOW & MARLOW
70 Middleneck Road
Great Neck, L. I., N. Y.
by: RICHARD A. MARLOW, ESQ.
and also
co-counsel
SCHOLARSHIP, EDUCATION AND
DEFENSE FUND FOR RACIAL
EQUALITY, INC.
150 Nassau Street
New York, New York
by: STEPHEN NAGLER, ESQ.

ARNOLD WARSHAWSKY
OFFICIAL COURT REPORTER

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I N D E X

witness	Direct	Cross	Redirect
Philip Ruffo	22-40	41-43 54-69	70-71
Comm. Henry Shemin	74-87	87-88	
Peter Goodman	89-101	101-107	

COURT OFFICER WALL: Thirty-five and thirty-six. Lucy Flynn, Judith Lamam, Elinor Kass, Judith Nage, Stefanie Ousler, Joseph Sperling, William Schleicher, Shian MacLean, Bernard Cacchione, Barry Gordon, Larry Bercowitz, Nils Brunner, William Dudan, Samuel Mazen, Jay Bitkower, Dennis Jamison, Madylyn Miller, Sandra Katz, Barbara Schecder, Janey Schleicher, Elizabeth Kurn.

Counsellor, will you state your appearance and whom you represent? You are --

MR. MARLOW: There will be a withdrawal of the attorneys and substitution of the attorneys at this time. My name, Richard Marlow, address --

THE COURT: I have two papers. I count from the calendar twenty-two defendants. Is that correct? Twenty-two. Are they all here?

MR. MARLOW: To the best of my knowledge.

THE COURT: Let's take a quick count.

COURT OFFICER WALL: Twenty-two.

THE COURT: All right. We have two separate complaints embodying those twenty-two, I take it. Who is substituting for whom?

MR. MARLOW: The firm of Marlow, Marlow and Marlow, 70 Middleneck Road, Great Neck, Long Island, by Richard A. Marlow, and Mr. Stephen Nagler, Esq. of the National Scholarship, Educational and Defense Fund will be substituted as attorneys.

THE COURT: You two are the incoming attorneys?

MR. MARLOW: Incoming attorneys; and here's my notice of appearance.

THE COURT: Who is this gentleman? Are you both counsel for the twenty-two?

MR. MARLOW: Mr. Nagler and Mr. Marlow will be co-counsel for the twenty-two.

THE COURT: And this gentleman?

MR. NAGLER: This is the attorney who is withdrawing from the case.

THE COURT: There is no objection, then,

as among the three of you?

MR. MARLOW: No.

MR. NAGLER: No; none whatever.

THE COURT: I am going to mark this superseded, consent.

MR. NAGLER: (to reporter) The counsel has laryngitis.

COURT OFFICER WALL: (to reporter) I will give you his appearance. Delson and Gordon, Attorneys, 120 East 41st Street; by Ralph Katz.

THE COURT: Now we have the representation up to date. What do you wish to do?

MR. MARLOW: With the Court's permission, we are ready for hearing at this time.

MR. GALLINA: Your Honor, in view of the fact that this case has been on three times, and it has been in the part in which the proper request for hearing should have been made, I think that at this time a request for a hearing is a belated one. It should occur in the parts prior to this, prior to their stating they are ready for trial and they want a three man bench, which they requested, and they have made -- I don't care who the attorney is, the defendants have so requested.

MR. MARLOW: Your Honor, this is an unusual case in that it is not the typical demonstration case which Your Honor and myself are familiar with. This involves a labor dispute, two labor organizations, both with very large memberships, vying. For that reason, I was substituted and brought in.

THE COURT: Will you excuse me a moment? I don't see where there is anything atypical about this, but the law as it now stands entitles anybody who wants, in your sense of argument, to take advantage of the situation, to have that advantage, because the law is explicit in stating that at any time before a witness is sworn, a person may request a hearing and a three man bench.

MR. GALLINA: This involves various

city --

THE COURT: (continuing) That is your privilege, and at this moment I don't feel I can be concerned with the ethics of it, or the good faith of it, because just as you have superseded someone else, the law supersedes any objection here, and I must obey the law regardless of my personal inclinations. Are you ready for a hearing?

MR. GALLINA: The People are ready.

THE COURT: Now, I believe -- As far as I am concerned, I don't mind if we have the hearing here. But I think that procedurely these things are supposed to --

MR. GALLINA: We can have it here.

THE COURT: Let's have it here because this is a big courtroom.

MR. MARLOW: We'll appreciate that.

THE COURT: Does everybody agree, then?

MR. GALLINA: Yes.

THE COURT: Marked ready for hearing.

MR. MARLOW: Thank you, Your Honor.

MR. GALLINA: We would ask that some time be given to substitute some witnesses. We don't wish to expose certain witnesses at this time to the defense, We wish to put certain other witnesses on the stand.

THE COURT: This is a hearing. You may conduct it as you please.

MR. GALLINA: We expect a little bit time to get those people in. We want this to be held until, at least, two o'clock.

THE COURT: How many witnesses do you need for hearing?

MR. GALLINA: Just a few. We'll have to get them into court.

MR. MARLOW: I would really object to having this put off until two o'clock. My office is out in Nassau County.

THE COURT: When you come here you must be prepared, under the most ordinary circumstances, to wait until two. There is never any guaranty. In fact, if you are reached at two, you are doing very well, because most of the time we wrestle with the calendar until then. I can put it down until two o'clock.

MR. GALLINA: The People are ready.

THE COURT: I don't think that's unfair.

MR. MARLOW: To put it down until two ?

THE COURT: For two. You will be reached at two o'clock, and I think you are doing very well to get a virtual guaranty that you will be reached. You wouldn't do any better any other time.

MR. MARLOW: You see, these people all work for the City of New York, and to hold it until two means that their department is going to be undermanned.

THE COURT: Let them go back, have lunch, and come back.

MR. MARLOW: It's the afternoon shift which they must meet.

THE COURT: A hearing should not take

very long.

MR. MARLOW: I agree. That's why I -- They put it over to two o'clock.

THE COURT: He says he needs witnesses.

MR. MARLOW: I don't understand. He is ready for a trial, and he has witnesses, but for a hearing he is not ready, he wants other witnesses?

MR. GALLINA: That's right. I will try my own case.

THE COURT: Just a minute, gentlemen. Did you indicate you had been ready for trial immediately?

MR. GALLINA: I would be ready for trial within minutes. But I am not ready for hearing. I wish to substitute certain witnesses. This is my privilege.

MR. MARLOW: I don't understand.

THE COURT: I don't either.

MR. GALLINA: I don't wish to expose certain City commissioners to hearing. I wish to expose them only to trial.

THE COURT: All right.

MR. MARLOW: Since on the hearing I am entitled to subpoena witnesses, may the Court at this instance, since I am just informed that there will be substitutions of witnesses, accept my oral application to have the witnesses, that is, the two commissioners and members of the Department of Labor who are here, to be considered under my subpoena as of this time to appear in this hearing. I had expected they were going to be called. If there are going to be secondary witnesses, these are people I wish to examine, also.

THE COURT: Well --

MR. GALLINA: I am sorry. I don't know what section of the Code of Criminal Procedure counsel is reading or has read that states he has a right to subpoena witnesses in and place them on the stand.

MR. MARLOW: At a hearing I have a right to call witnesses.

THE COURT: Correct. He has a right to call them, but not to have them called if they happen to be in court.

MR. MARLOW: I have a right to call them, and I would have to issue subpoenas.

THE COURT: You can't serve them with subpoenas here in the courtroom.

MR. MARLOW: I know, and I am asking the court to do -- to request these witnesses to be present at this hearing.

THE COURT: I won't do that.

MR. MARLOW: Will this be marked down in the regular course of your calendar and be called in turn, please, rather than be held for two o'clock?

THE COURT: It won't be ready until two o'clock. Two o'clock. All right. Would you mind all returning at two o'clock, please, for a hearing?

(case set aside - later recalled)

(P. M. Session)

COURT OFFICER WALL: Calendar number thirty-five and thirty-six. Docket B-9563 through B-9568; Lucy Flynn, Judith Kanan, Catherine Fritz, Eliner Kass, Judith Nage, Stefanie Ousler, and Joseph Sperling, charged with unlawful intrusion and violation of 1530, subdivision 4. On calendar number 36, docket B-9571 through 9586, defendants Joseph Sperling, William Schleicher, Shian MacLean, Bernard Cacchione, Barry Gordon, Larry Bercowitz, Nils Brunner, William Dudan, Samuel Mazen, Jay Bitkower, Dennis Jamison, Madylyn Miller, Sandra Katz, Barbara Schecder, Janet Schleicher, and Elizabeth Kurn, charged with 2036, 1530 subdivision 4 of the Penal Law.

THE COURT: State your appearance, counsellor, and whom you represent.

MR. MARLOW: Representing all defendants as co-counsel, Richard A. Marlow of the firm of Marlow and Marlow and Marlow, 70 Middleneck Road, Great Neck, Long Island.

MR. NAGLER: Co-counsel Stephen M. Nagler, 150 Nassau Street, New York, New York.

THE COURT: Do you have the papers, Mr. Gallina?

MR. GALLINA: Yes.

THE COURT: Now, will you put on record that stipulation which you discussed with me before the adjournment?

MR. GALLINA: For the convenience of the Court, would it be permissible if one of the defendants sat up there and the others remained in the court rather than have a whole array of charges?

THE COURT: Whatever you want.

MR. MARLOW: That's what I prefer.

MR. GALLINA: This is the defendant --

DEFENDANT KATZ: I am Sandra Katz, K-a-t-z.

MR. GALLINA: Is Mage here?

MR. MARLOW: She was here this morning. The reason why Miss Katz is here is that she is the senior officer of the union involved, and I thought it would be --

THE COURT: Anybody you want. Just let's get the stipulation.

MR. MARLOW: Now, for the record, it was

stipulated and agreed by and between the district attorney and counsel for the defendants that the following would happen: That the appearance of many of the defendants would be waived at this examination, but that in consideration of that, and for the purposes of this hearing alone, counsel for the defendants would stipulate that all of these defendants named in the information were present on the day of the arrest, and for a period of approximately one week prior to the date of arrest, at the place and location in the County of New York which is set forth in the information.

THE COURT: Is that all right?

MR. GALLINA: Satisfactory.

THE COURT: Let's proceed.

MR. MARLOW: Thank you. Your Honor, if I may just state one thing for the record to clarify. After I left the courtroom there was a slight encounter in the hallway, I think it should be clarified for the record, as to the status of my appearance and the status of my position with the City of New York. It was stated to me by a person whom I believed to be a Deputy Commissioner of the City that there was a conflict of interests in my representing any persons who were engaged in any act which might entail an action against the City of New York, since I hold the position of Counsel to the Bronx Borough President.

I would like to state for the record, so that there is no suggestion of over-reaching, that that position is one which I do hold, but as a non-compensatory position. I receive no salary. I will accept no salary. I am receiving no pay whatsoever for handling this matter, nor will I ever appear in any action wherein the City is being sued, so that there is no conflict of interest. I am representing these persons merely as defendants who have been charged with the Penal Law.

MR. GALLINA: The issue is simply, under the rules, whether or not the counsel for the defendant is representing the City in any other manner and representing a person who is an antagonist toward the City today. Do you consider yourself in such a representation?

MR. MARLOW: I don't consider these persons antagonists against the City of New York. I do not feel that there is any conflict of interest.

THE COURT: There is a branch of the City which is the complainant; a branch of the Municipal government which is the complainant.

MR. MARLOW: The complaining witness, of course, is not really the complainant since the complainant in this matter is the People of the State of New York; not the people, not the City government of the City of New York, but the People of the State of New York, and they are complaining through certain complaining witnesses. I am not representing these persons in any action against the City of

New York; therefore the question -- and under the City of New York Code of Ethics, I may not represent one in a suit against the City of New York, nor where I would be representing the City and the suitor or the complainant. Now, the City is represented by the District Attorney and Corporation Counsel, and I am not a member of either of those branches of government.

MR. GALLINA: I would think that counsel's statements are words or cemantics, that the situation here is --

THE COURT: Do you object to his representing them?

MR. GALLINA: Yes; I do.

MR. MARLOW: That can be noted. If a complaint is wished to be lodged against me, that's his prerogative.

THE COURT: It's not a question of lodging complaints against you. It's a question of your right to represent them, because of the possible conflict of interests, and it is not as clear to me as it seems to be to you that you are entitled to represent them.

MR. MARLOW: Well, I have gone through this matter a number of times.

THE COURT: With whom?

MR. MARLOW: With other persons who have raised the same objection.

THE COURT: And have you taken the matter up with the Bar Association, for example?

MR. MARLOW: With the Bar Association, no; with members, persons connected with the grievance committee, yes, in a non-official capacity. Since I am not really an employee of the City of New York, but rather a personal relationship exists between me and an elected official. I am not really a member of the City staff in any way.

THE COURT: You are paid by the City?

MR. MARLOW: I am not paid.

THE COURT: Well, you say you are counsel to the Borough President.

MR. MARLOW: That's right; that's correct.

THE COURT: You don't receive any salary?

MR. MARLOW: None whatsoever. There isn't, either, a line in the City for such a position.

THE COURT: Well, how did this relationship come into being, by private agreement between you and the Borough President?

MR. MARLOW: That's correct.

THE COURT: All right. I think he can represent them. I thought, when you said you weren't being paid, you were not being paid by present defendants.

MR. MARLOW: I -- By the City of New York. I receive no compensation from the City of New York.

THE COURT: I think that he is entitled to represent them, at least on the hearing, and if I were you, if it goes beyond the hearing, I would see if I can get some kind of official clearance. I think you are all right; as long as you represent the Borough President as a client without pay, particularly.

MR, MARLOW: It's no City position.

THE COURT: You are not on the City payroll. I think you can represent them.

MR. MARLOW: If I may, also, I have two judicial subpoenas which were served this date, if I may hand them up.

THE COURT: Which were served?

MR. MARLOW: This date, by two persons who are now here.

MR. GALLINA: People call as their first witness -- and are ready in this case — Mr. Ruffo.

COURT OFFICER JOHNSTON: Step up. Raise your right hand and face the judge.

THE COURT: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MR. RUFFO: I do.

COURT OFFICER JOHNSTON: Be seated. In a loud voice, what is your name?

MR. RUFFO: Philip J. Ruffo.

COURT OFFICER JOHNSTON: Spell your

last name.

MR. RUFFO: R-u-f-f-o.

COURT OFFICER JOHNSTON: Your address?

MR. RUFFO: 1795 East Second Street, Brooklyn, New York.

COURT OFFICER JOHNSTON: Your business or occupation?

MR. RUFFO: General Counsel and Acting Deputy Commissioner of Labor, of the New York City Labor Department.

THE COURT: Now, before we go any further, and -- off the record.

(Discussion off the record)

THE COURT: Go ahead. Back on the record.

PHILIP J. RUFFO, being called as a witness in behalf of the People, being duly sworn by the Court, upon examination, testifies as follows:

DIRECT EXAMINATION

BY MR. GALLINA:

Q Mr. Ruffo, in your capacity as Deputy Commissioner, did you have an occasion on and from the 11th of October 1966 to the 17th of October 1966 to be at or near 93 Worth Street, City, State, and County of New York?

A Yes; I did.

Q Will you tell us what that premises is?

A The fifth floor of 93 Worth Street is occupied by the New York City Labor Department.

Q Do you occupy the whole floor?

A Yes; we do.

Q And would you give us a rough and brief picture of what the premises layout is?

A Well, starting from the front, and by the front I mean that part of the premises facing Broadway, there are two front rooms, one of which is occupied by the Commissioner of Labor, Commissioner Shemin, There is another room which presently is unoccupied. As you walk out either of the two rooms, there is a space where employees of the City Labor Department work, approximately three or four girls work as secretaries. There is then an inner reception room, and following the --

Q What is between the inner reception room and this working area of the office?

A There is a partition approximately three, three and a half feet from the ground.

Q And does it have a door or something?

A It's -- It's got a swinging door.

Q And this inner waiting room that you call it, how big is it, approximately?

A It's approximately fifteen feet wide by about twenty-five feet in length.

Q And after you leave the inner waiting room, what do you enter, and how do you enter it?

A Are you referring now, sir, going into the inner reception --

Q Leaving the inner waiting room.

A You would pass through two doors, that is, double doors, into a corridor, and adjacent, immediately adjacent to the corridor are elevators which, of course, go up and down.

Q Do you have any member of the Department of Labor stationed in the outer corridor?

A There is a receptionist, a young lady behind a partition.

Q It would be fair to call this an outer reception area; is that right?

A I would say so; yes.

Q Then we have, if I am correct, an outer reception area which you enter from the back elevators, and swinging doors which you enter into the inner reception area. Past that there is a sort of guard rail situation into the working area for the secretaries and other office personnel, and then there is the personnel officer of the -- office of the executives of the Department of Labor.

A That is substantially correct, except that the double doors you referred to are not swinging doors. Actually, they are opened manually.

Q Fine. Now, on the 17th of October -- On the 11th of October 1966, did you have occasion to see the defendants in this case, Joseph Sperling and the twenty-one other defendants that we have had a stipulation to prior to your taking the stand?

A Yes; I recall that.

Q And did you have an occasion to see the commissioner, Mr. Shemin, on that date?

A Yes.

Q And will you tell us what the first event was on that date?

A Well, the defendant, Mrs. Judith Mage, who was the President of the Social Service Employees Union , came to our Department to discuss with Commissioner Shemin a decision we had previously issued.

Q When you say"to discuss", did she come with anybody else?

A She came with a number of people, a delegation or a committee.

Q Where did they first approach the Commissioner?

A Well, Mrs. Mage came in alone to the Commissioner's room.

Q That's his own office?

A That's correct; and the delegation and the committee remained in this inner reception room.

Q Now, did you have a conversation or did you hear the conversation between Mrs. Mage and the Commissioner?

MR. MARLOW: I will object to that. It assumes there was a conversation.

THE COURT: I will allow it. If there was, he can tell us. If there weren't, he can tell us.

Q Was there a conversation?

A There was a conversation; yes.

Q And during that conversation, did Mrs. Mage make any requests? Yes or no?

A Yes. There was a request. In fact it was a demand, not a request.

MR. MARLOW: I will object to that unless the exact content or statement were brought out. That's a conclusion on his part.

THE COURT: Yes. Tell us what was said if your counsel wants you to tell us.

MR. GALLINA: Yes; I will go into that.

Q What was the conversation, please?

A The conversation concerned a decision which the City Labor Department had issued.

MR. MARLOW: Now wait, I will object. If he is testifying to anything which the Commissioner may have said --

THE COURT: Objection overruled.

MR. MARLOW: Your Honor --

THE COURT: Objection overruled. Sit down, please. Sit down, please.

MR. MARLOW: May I be heard?

THE COURT: Now you may not. Sit down. I have made my ruling. If you feel it's wrong, you have a remedy, I take it. Continue.

Q Tell us about that conversation relating to these demands.

A Yes. Mrs. Mage told the Commissioner that the union and she were displeased and dissatisfied with the decision of the City Labor Department. Further, that the particular decision was wrong and unfair, and that the Labor Commissioner ought to reverse himself --

Q Go on.

A -- and change the decision to one which was favorable to her particular situation.

Q And what did the Commissioner state in return?

MR. MARLOW: I will object to that,

if Your Honor please; that's heresay.

THE COURT: Objection overruled.

Q Tell us, please.

A The Commissioner said --

THE COURT: This is conversation between the Commissioner and the lady?

THE WITNESS: And the lady; precisely.

THE COURT: I don't know where you get your law from, frankly.

MR. MARLOW: May I be heard on the point?

THE COURT: No, sir.

MR. MARLOW: How can you question where I get my law from if you won't let me be heard on the point?

THE COURT: I deem it unnecessary, being the proposition is so self-evident. Just sit down.

THE WITNESS: May I say, Your Honor, that I was present.

THE COURT: Don't say anything. You are reporting to us conversation you heard between this lady and the Commissioner.

THE WITNESS: That I was present during the entire course of that conversation.

THE COURT: We know that. Otherwise you couldn't have heard it. You are telling us what you heard.

Q What did the Commissioner state in reply?

A Commissioner stated to Mrs. Mage that he would take into consideration her demand to change his mind or change the decision, and if I recall correctly, I think that was just about the substance of the conversation.

Q Did he make any statement as to what he wanted her to do at that moment?

A No --

MR. MARLOW: I will object to that again.

THE COURT: Overruled.

A He did tell Mrs. Mage that there was a manner in which the decision of the City Labor Department could be challenged; that there was a legal remedy for it; that the union could institute Article 78 proceedings seeking a judicial review of an administrative decision. He did tell her in --

Q At that moment.

A At that time?

Q At that time and in this first conference, where did Mrs. Mage go after that?

A She then proceeded out of the Commissioner's room into the inner reception room which I previously described, and joined her group of people that were waiting for her.

Q Did you have an occasion to see them again that day, the defendants?

A Yes; several times.

Q Where were they at that time?

A In the reception room.

Q In the reception room; and what time was the latest that date that you saw the defendants in that reception room? This is the inner or outer?

A The inner reception room.

Q What time was the latest that you saw them?

A The time I left for the day, which was approximately five-thirty or six o'clock.

Q Did you have an occasion to see them again after that day in those offices?

A Yes. When I came in Thursday morning. The intervening day, Wednesday, October 12th, was Columbus Day. The Labor Department premises was closed for business on that date. But Thursday morning, as I walked in, I noticed the group of people assembled in the inner reception room.

Q Are these the same people you had seen on Monday?

A I couldn't say definitely whether all of them were the same people. I was able to recognize some two or three.

Q Now, at the time that you had seen them and heard these conversations on Monday, did you at any time, or did you hear Commissioner Shemin at any time, give them permission to remain in the premises?

MR. MARLOW: I will object to the form of that question.

THE COURT: Objection overruled.

MR. MARLOW: Excuse me, Your Honor, may I be heard on that?

THE COURT: No. Objection overruled.

MR. MARLOW: May I take an exception to the ruling, and may I take exception to the fact that you will not let me at least state what the grounds for my objection are.

THE COURT: You have an exception.

MR. MARLOW: Thank you, Your Honor.

THE WITNESS: May I have the last question, Your Honor?

THE COURT: Yes.

(The Reporter read back the last question)

MR. GALLINA: I'd like the question corrected to read for 'Tuesday'.

MR. MARLOW: No objection.

A No.

Q Did you see Commissioner Shemin Thursday in these offices?

A Yes.

Q Did you observe Commissioner Shemin address the group of defendants, or any of the defendants, on Thursday?

A Yes.

Q Yes or no?

A Yes.

Q Now, were you present in the office on Friday?

A Yes.

Q Were these defendants, same defendants, present in the office on Friday?

A Yes.

Q Were you present in the evening or the night time at any time during this week in the offices yourself?

A No, sir.

Q Now, did you have an occasion to see these defendants on Monday in these same offices?

A Yes.

Q And at that time did you observe Commissioner Shemin to address any of these defendants?

A Not to my recollection, sir.

Q You don't -- You weren't present at that time?

A Not Monday during the day. During the evening, yes.

Q And do you remember what Commissioner Shemin said to these defendants?

A Well, this was approximately eight o'clock on the evening of Monday, October 17th. I accompanied Commissioner Shemin to the Labor Department, and at that time Commissioner Shemin spoke to Mrs. Mage and her group that were assembled in the inner reception room, and he told them at the time that he had tolerated their presence on the premises of the City Labor Department long enough, that they were conducting themselves in a boisterous manner.

MR. MARLOW: Excuse me. I must object to this. Commissioner Shemin is here in court and can testify to what he said. To allow this person to testify as to the conversation of another is objectionable under the hearsay rule, and there are no exceptions which would take it out of the hearsay rule. That witness is present and can testify. He is testifying to statements of another person, and testifying as to the truth and validity of those statements.

THE COURT: Objection overruled. You have an exception.

Q Go ahead.

A And he, the Commissioner, stated to Mrs. Mage that both she and her group would have to leave the premises, and unless they did so within a period of five minutes, if I recall correctly, that he would then instruct the police captain -- I believe it was Captain Howe -- to place the defendants under arrest.

Q Did you observe any of these individuals who were present in the office to leave?

A Some did leave. Approximately five or six left after the statement that Commissioner Shemin made to Mrs. Mage and the group.

Q Did you at this time observe any police to converse with the defendant Joseph Sperling and the twenty-one other defendants?

A Captain Howe also made statements to the defendants and --

Q That's captain who -- You mean Police Department -- Howe?

A Yes, sir; and he repeated in substance what Commissioner --

MR. MARLOW: Same objection, Your Honor.

THE COURT: Overruled.

A And he repeated in substance what Commissioner Shemin stated to the defendants, including Mrs. Mage, that if they did not leave the premises, having received instructions from the Labor Commissioner, he would be required to place them under arrest and remove them from the premises.

Q You observed them to be arrested at that time?

A Yes, sir; I did.

Q Now, at any time during this period, did you give these defendants permission to remain in these premises?

A No, sir; I did not.

MR. GALLINA: One moment, Your Honor.

Q Mr. Ruffo, are you cognizant of the manner of operation of the office of the Department of Labor on the fifth floor, of the office practice on the fifth floor and the place of working personnel?

A Oh yes; I am.

Q And the presence of these defendants on the days that you mentioned, from the 11th to the 17th of that month, did it in any manner interfere with --

MR. NAGLER: Objection, Your Honor. He is leading the witness.

MR. GALLINA: May I finish the question?

THE COURT: Continue.

Q -- interfere with the practice, the normal practices and the services that you give to the public, and if so, will you tell us how?

MR. MARLOW: I will object to the form of that question, in that it assumes its own answer.

THE COURT: Objection overruled.

A As I stated previously, sir, there are three or four girls working at all times in the front part of the premises, which is immediately close to the inner reception room, separated only by this inner guard or rail which is approximately three-and-a-half to four feet from the ground, from the floor. During this period of time the defendants were singing songs, talking in a loud manner, making loud conversation, noises of all kind, cooking.

THE COURT: Cooking?

THE WITNESS: Cooking.

THE COURT: Food?

THE WITNESS: Yes, Your Honor. They had cooking equipment there, in addition to bedding. And it was just impossible for our people in the certain -- in the front part of the premises to do any kind of work. The girls just had to stay on their feet and look around.

THE COURT: Regardless of whether it was possible or impossible, as you put it, did your girls do any work during this period of occupation by the defendants?

THE WITNESS: Very little, as far as I know, Your Honor. Very little.

Q During this period of occupancy by these defendants in these premises for that period of one week, or give or take a day or so, were your services to the public affected in any manner?

MR. MARLOW: I will object to that question.

THE COURT: Objection overruled. Tell us what effect, if any, the presence of these defendants had on the services that you normally render to the public. Put it that way.

A People who came to the City Labor Department for legitimate business were directed not to go through the doors leading to the inner reception room, but were directed to a corridor in order to get to the portion of the premises that you would describe as the executive portion.

BY THE COURT:

Q You couldn't use, you are saying, the routes that would normally be used to transact their business? In effect that's what you are saying?

A There was a blockage.

Q They had to be re-routed?

A Yes, Your Honor.

THE COURT: All right. Go ahead. Next question.

BY MR. GALLINA (continuing):

Q The services that the secretaries performed, were any of those services connected with the public?

A Yes.

Q And were they able to aid the public in their normal manner while these defendants were present?

A No, sir.

MR. GALLINA: I have no further questions at this time.

THE COURT: Proceed.

CROSS EXAMINATION

BY MR. MARLOW:

Q Commissioner, if I may, you say that the first day that these persons were in attendance was on the eleventh of October; is that correct?

A That's correct.

Q Approximately what time did you come into the office on that date?

A Perhaps nine; anywhere between nine and nine-thirty.

Q When you appeared at the offices, were the people from this union already there?

A Yes; they were.

Q So they had appeared before you appeared?

A I beg your pardon. What day did you say now?

Q Monday, the first day, the 11th -- Tuesday, I mean. Tuesday is the 11th.

A They were not there when I arrived in the morning.

Q What time, approximately, did they arrive?

A I would say between ten-thirty and eleven o'clock in the morning.

Q You say that the delegation itself remained in the waiting room; is that correct?

A This is correct.

Q And that one, Judith Mage, went in and spoke with the Commissioner; is that correct?

A That's correct.

Q And you stated they had a discussion about a certain labor problem; is that correct?

A That's correct.

Q Would you please state for the record exactly what was that labor matter that they were discussing?

MR. GALLINA: Objection; irrelevant.

MR. MARLOW: Your Honor, the door was opened by the district attorney by bringing this in in the first place, and I feel I am entitled to bring out the full scope of what this conversation was all about, and why it was that these people were present, and why in fact they had every right to be present, since this is exactly what the Department of Labor is set up to do.

THE COURT: You mean to be there to cook their meals therein, and sleep there, and sing?

MR. MARLOW: We are talking just now about Tuesday morning at eleven o'clock. And since this conversation took place at that time, the fact that they may have at some future time done something which may have been improper --

THE COURT: Objection sustained.

MR. MARLOW: Your Honor, the door has been opened to this.

THE COURT: Objection sustained.

MR. MARLOW: Then you are saying that their being --

THE COURT: I said objection sustained. You proceed with your examination.

MR. MARLOW: Your Honor, I can't proceed with my examination.

THE COURT: Don't you wish to proceed?

MR. MARLOW: I do, very much.

THE COURT: Proceed.

MR. MARLOW: I can't.

THE COURT: All right. Step down, sir.

MR. MARLOW: Excuse me, Your Honor, if I may be heard on this a moment?

THE COURT: Step down. Do you wish to question this witness any more?

MR. MARLOW: I do.

THE COURT: Well, when I make a ruling, you will abide by my ruling. If you don't I will consider you in contempt of Court. It's my function, you see, to make the ruling. If I am wrong, you have your remedy. Step back, sir. I think that he has changed his mind. He wants to continue the examination.

MR. MARLOW: No, Your Honor. On the contrary. I feel that --

THE COURT: Do you or do you not wish to continue this examination?

MR. MARLOW: I feel I would be unable to properly represent my clients at this examination, and therefore, not wishing to be in contempt of Court, I will remain in this courtroom with my clients, but I do not feel I can represent them adequately.

THE COURT: All right, sir. Step down. He doesn't wish to cross-examine you any further. Is this the People's case?

MR. GALLINA: I have one further witness. I have no further witnesses.

THE COURT: Do you wish to call any witnesses?

MR. GALLINA: People's case.

THE COURT: Do you wish to?

MR. MARLOW: I am not participating in this case.

THE COURT: I don't know what you mean. You don't want to continue?

MR. MARLOW: I am not participating.

THE COURT: Is this the close of the People's case?

MR. GALLINA: That's People's case.

MR. MARLOW: Your Honor, may I please be heard for a moment?

THE COURT: May I have the papers?

MR. MARLOW: May I be --

THE COURT: You told us you no longer wish to participate.

MR. MARLOW: May I be heard?

THE COURT: You may not be.

MR. MARLOW: I feel my clients rights are being jeopardized.

THE COURT: By you.

MR. MARLOW: May I please approach the bench with the district attorney?

THE COURT: You will not approach the bench. They are being jeopardized by you because you have taken upon yourself the function of making rulings.

MR. MARLOW: No. I would never do that, especially with Your Honor. I know your rulings are duly considered. But I would just like an opportunity to explain what my position is.

THE COURT: It's not necessary. This is a formal hearing. Either I know my business or I don't.

MR. MARLOW: Your Honor, I have never once intimated that you did not.

THE COURT: That's not the point. That's a question possibly for an upper court, not for you or for me. Now, in my opinion you were wrong in the stance that you are assuming here because -- Stop interrupting me.

MR. MARLOW: You are right.

THE COURT: -- because assuming that I am not, assuming I am wrong in making a ruling, that is my function. I don't think I am wrong. You brought up this question of hearsay. I frankly don't think -- I don't want to put it this way because it doesn't sound respectful. I was about to say I don't think you know what you are talking about, because when a gentleman who listens to two persons talking, one of whom is the defendant, reports that speech, that isn't hearsay. He is not telling us something that somebody else told him. He is telling us something that he has, that he is transmitting, through one of his fundamental senses, whether he heard it or saw it or felt it, or whether he absorbed it in any way through some part of his system. It is not hearsay, That is how you started, telling me that's hearsay.

MR. MARLOW: No.

THE COURT: I am not going to get involved with you. I am telling you why. I think that my position in this matter is correct. With respect to my rulings as regards the scope of cross-examination, you will simply have to be bound by it. This is not a matter of personality.

MR. MARLOW: No; it's not at all.

THE COURT: Don't. Please don't interrupt me. It isn't a matter of personality or animosity or predisposition. I am simply conducting a hearing and using whatever talents or competence I have to do it. I think in everything I have done so far I am right. Of course, there are times when I think I am right and when I am wrong. But there is a remedy for those things, and the remedy is not to take the attitude that you are taking because you don't happen to like a ruling I make. You know that you are wrong.

MR. MARLOW: That's not the reason, Your Honor. All I am trying to do --

THE COURT: I can't understand you.

MR. MARLOW: Could I just say something for a moment?

THE COURT: Go ahead.

MR. MARLOW: With all due respect --

THE COURT: I am here to listen to you, but --

MR. MARLOW: All I am trying to do, and most respectfully, is that I am certain that in most times, if not in all times, you are correct. But perhaps I might have a point, and when I just am limited to saying "I object", I cannot bring to your attention what is on my mind. Now, the district attorney makes objections.

THE COURT: May I say this, Mr. Marlow?

MR. MARLOW: Yes.

THE COURT: If I feel I need amplification as a basis for ruling on an objection, I will gladly listen to you. But as you did, trying to tell me the hearsay rule was involved when a man is reporting what is transmitting through his senses -- not what somebody said to him, because that is hearsay, when somebody says something to you that you are reporting. This gentleman who was on the stand, Commissioner Ruffo, was not telling us something that the other commissioner told him. He was reporting what had been transmitted to him through his senses. Now, I can't stop to engage with you in the exposition of a fundamental rule of evidence. I just believe there is absolutely no question of that. I think if you think about it, you will concede I am right. Now, with respect to any other rulings I make, I may say -- and I don't have to say it -- but I assure you, I am doing the best my modest talents and competence permit me to do. That's all I can tell you. I will continue to make rulings to the best of my ability, but so far as I can, without bias, without interests. Certainly I don't know anybody in this case. I have never met either of the two commissioners before. I don't know your clients. I remember you. You were in the District Attorney's Office, if I remember correctly.

MR. MARLOW: That's correct.

THE COURT: Of New York County?

MR. MARLOW: Yes.

THE COURT: And probably the one person with whom I have closer relationship is you.

MR. MARLOW: That's correct.

THE COURT: And yet I am going to continue to make rulings that I feel are right. If you don't want to continue, if you want to take the attitude that because you disagree with me, you interpret that as meaning that I am hindering you or binding you, or hemming you in, I am sorry. There is nothing else I can do.

MR. MARLOW: Your Honor, if I may just say before proceeding --

THE COURT: I am not going to say any more. I am afraid I am becoming eloquent beyond the needs of the occasion.

MR. MARLOW: If I may just say, since you have pointed out, if the rest of the courts were to have the modest talents you have, we'd have a very fine bench. I don't want anyone to feel this is personality. I told you it was not.

THE COURT: When this hearing is finished, you can come in and I will shake hands with you, and we can discuss the football game yesterday.

MR. MARLOW: No, please.

THE COURT: But right now we have a situation --

MR. MARLOW: That is a sore point.

THE COURT: We have a situation in which I am presiding, and you are one of the advocates, and I simply can't permit you to take the position that you wish to be the presiding judge. I just can't. It can't be. If you want to go ahead, I will recall Mr. Ruffo.

MR. MARLOW: If you would, please.

THE COURT: I can assure you, I am not in the least upset about you; not at all.

MR. MARLOW: I am certain you are not.

THE COURT: I am very happy to do it. I learn every minute, and as I say, I may be wrong, but I don't think I am. What do you wish to do?

MR. MARLOW: I'd like to proceed.

THE COURT: All right. Mr. Ruffo, if you don't mind.

(The last witness, Philip Ruffo, resumes the witness stand.)

COURT OFFICER JOHNSTON: Be seated, sir. You are still under oath.

THE COURT: Let's proceed.

PHILIP RUFFO, being recalled to the witness stand, having previously been sworn by the Court, upon further examination, testifies as follows:

CROSS EXAMINATION (continuing)

BY MR. MARLOW:

Q Mr. Ruffo, if we may get back to the first date in question, that is the 11th day of October, the delegation which remained in the outer room, what size delegation was that, if you recall?

A I'd say approximately twelve people.

Q Now, during the time when Miss Mage was in the office, did you have occasion to observe the delegation in the outer office?

A Yes, because we were behind closed doors.

Q Fine. At any time later in the day, did you have an occasion to observe this delegation out in the outer office?

A Approximately three to four times that day; yes.

Q Could you give us the approximate times and the duration for which you observed this group?

A I couldn't give you the approximatel time, sir. I know that I walked back and forth some three or four times during the course of that day, and on each occasion observed that the defendants were in the inner reception room.

Q Now, approximately what time of day did you leave the office on that first Tuesday?

A Approximately five-thirty.

Q Now, during the time when they first came in, that is at approximately eleven, eleven-thirty, until the time that you left, between five and five-thirty, when you observed them or had occasion to observe them, could you tell, please, the Court what if anything you observed them doing?

A Singing songs -- one chap had his guitar -- talking in a manner that was audible, very audible.

Q Were any of them cooking during this time?

A Not that day; no, sir.

Q Were any of them sleeping on the floor or on bedding of any sort during that day?

A No, sir.

Q Now, if I am correct, upon questioning by the district attorney, you said that no one gave them permission to remain that day; is that correct?

A That is correct.

Q Do you know if anyone told them to leave?

A I don't know that, sir.

Q Now, sir, the Department of Labor, exactly, if you would, if you paraphrase, and with the Court's permission, what exactly is your function? You are a City agency; is that correct?

A That is correct; correct.

Q What is your function as a City agency? What is your primary obligation?

A Primarily the City Labor Department administers the labor relations program for City employees.

Q Now, were the persons of this delegation City employees?

A I could only assume that, sir. I am reasonably certain.

Q To the best of your knowledge?

A Mrs. Mage is because I have encountered Mrs. Mage on prior occasions.

Q The union she represents, do you know what union that is?

A I believe it is the Social Service Employees Union.

Q And these Social Service Employees, are they, to the best of your knowledge, in the predominant number, members of the New York City Department of Welfare?

A I would say yes.

Q So in other words, to the best of your knowledge, these persons were actually City employees?

MR. GALLINA: Objection. That's not what he said.

THE COURT: Can't we get a stipulation on this? Why do we have to have every little point? That should be settled quickly so we can get to the main issue, expanded. Can't you stipulate that these persons were City employees?

MR. GALLINA: Yes; I can.

THE COURT: Can you stipulate?

MR. GALLINA: I don't know, Your Honor. If he could just tell me?

MR. MARLOW: They were. They are.

THE COURT: We'll take your word for it.

MR. MARLOW: Fine. Thank you.

Q Now, what are the office hours of your office?

A Nine to five.

Q Nine to five. So that during this time of nine to five, to the best of your opinion as a Commissioner -- I take it you are also counsel?

A That is correct.

Q These persons were really there for a reason which your Commission is set up for; there was a labor grievance. Is that correct?

A We are going to get into debate here. I can only say no.

MR. MARLOW: I will withdraw the question.

Q Was there a labor grievance?

THE COURT: Is this the way you would normally handle a labor grievance?

A There are technical distinctions with respect to the significance of grievance itself. I don't suppose it's my function to get technical. I would say in the broad sense, yes, in as much as the union had, in the colloquialism, a gripe. If that's to be construed as a grievance, yes.

Q To be exact, it involved an election; is that correct?

A It involved a request on part of the Social Service Employees Union for a representation election; yes.

Q And that is a labor dispute?

THE COURT: Did they have a right to come to your office and speak to you about it?

THE WITNESS: Yes, Your Honor.

MR. MARLOW: Fine. Thank you.

Q Sir, you say that Wednesday you saw nothing because it was a holiday; is that correct?

A That's correct.

Q And the next day that you were there was Thursday; is that correct?

A That's correct.

Q On Thursday, approximately what time, to the best of your recollection, did you first appear at your office?

A Approximately nine.

Q And at the time that you appeared, were members of this delegation present?

MR. GALLINA: In view of the questioning, I think he should shorten the situation. We had a stipulation that the people -- for the matter of the hearing -- were present during this week.

THE COURT: I wish you could shorten it. We know what the issue is. I don't know what the --

MR. MARLOW: All I am trying to point out through my line --

THE COURT: I don't think we need amplification.

MR. MARLOW: All I am trying to point out, not that these persons were there, what they were doing if they were there or when they were there. They were there. I am trying to show what they were doing.

THE COURT: Instead of -- Ask the gentleman what they were doing.

MR. MARLOW: I am trying to find out what if anything he saw them do. To my understanding, my clients have informed me, that there was an election dispute, and they were there to discuss it, and in fact had been discussing it during all this time with members of the department, not perhaps this witness.

THE COURT: What else? What else were they doing besides discussing it?

MR. MARLOW: That's what I am trying to find out. Why don't you ask?

THE COURT: They came there to discuss something having to do with a labor dispute.

MR. MARLOW: With a labor dispute.

THE COURT: Call it a labor dispute if you will. But how did they go about this? That's what we want to know.

MR. MARLOW: That's what I am asking; what if anything he saw Thursday when he came in.

BY THE COURT:

Q What did you see Thursday?

A I saw the defendants grouped in the inner reception room, singing songs, talking in loud voices, walking to and fro in the reception room, and that was about the substance of what I saw.

BY MR. MARLOW:

Q To the best of your knowledge, do you know whether any members of this delegation had any conversations on this date with any members of your department concerning the labor -- if we may call it -- dispute which they were allegedly there for?

A The only conversation that I can recall was one that was had, Commissoner Shemin and Mrs. Mage.

Q This is on Thursday?

A This is on Thursday.

Q Do you know, to the best of your knowledge, whether any other members of the delegation had conversations with any other members of your office?

A I don't know that.

Q Now, on Friday, again if you will just paraphrase, to the best of your recollection, what if anything did you see?

A Well, this time I saw a little more. I saw personal belongings strung up in the inner reception room on string.

THE COURT: What personal?

A I mean clothes; shirts, and stockings, and sweaters, and so-forth. And this is when I for the first time -- at least I for the first time -- observed cooking equipment, cans of food, and bedding.

Q Do you know of your own knowledge who these personal possessions belonged to?

A No, sir; I don't.

Q Now, do you know if any conversations took place between any members of the delegation and any members of your office or staff on Friday?

A I am not aware of any conversation on Friday.

Q Were you present in your office on either Saturday or Sunday?

A No, sir.

Q So the next day, and the last day, would be Monday; is that correct?

A That is correct.

Q What time of day did you arrive at your office, if you recall?

A Approximately nine.

Q And at that time do you recall having any conversation with members of the delegation?

A I might have had one conversation with members of the delegation; yes.

Q Do you recall what that conversation was or with whom you had it?

A It was an explanation in connection with a policy that the City Labor Department had.

Q And could you tell us what that conversation was, what you said and what the other person said?

MR. GALLINA: Objection.

THE COURT: Do you remember the conversation?

THE WITNESS: In substance I do.

THE COURT: Let's have it. Overruled.

A This was a conversation, or rather a conversation that I had, conversation with the group of the group at the request of Mrs. Mage. If I recall correctly, she asked me if I would explain the rationale of our decision -- of our previous decision -- and I proceeded to do so.

Q Could you tell us what you said and what they said, to the best of your knowledge and recollection?

A Well, I told them that we had a contract bar policy which was invoked in this particular case with respect to the untimely and invalid filing of a representation petition. They didn't say; they cat-called and booed.

Q And is that basically the conversation, the discussion?

A Yes.

Q Now, sir, if I may, on either Thursday, Friday, or this Monday, up until but not including the eight p.m. discussion which you testified to previously, do you know of your own knowledge whether anyone told these people to leave the premises?

A I don't know that, sir.

Q Now if I may, you say that there were two secretaries in the outer waiting room; is that correct, that's near the public hallway?

A One that I am aware of. There may be two on occasions.

Q One that you are aware of. Do you know of your own knowledge whether any members of the general public came to this secretary during that time? Of your own knowledge.

A Of my own knowledge, no.

Q You say that certain lines were set up or that people were re-routed to obtain the inner offices if they so sought; is that correct?

A That's correct.

Q Do you know of your own knowledge whether any persons -- of your own knowledge -- were so re-routed?

A Except for what was told to me?

Q Of your own knowledge.

A I did not -- Perhaps on one or two occasions I did observe people coming through this door and then walking through the corridor.

Q But do you know of your own knowledge whether anyone directed them to use another door?

A The receptionist was instructed to direct any member of the general public coming up, having business with the City Labor Department, not to direct them through the inner reception room, but rather through this door into the corridor.

Q Do you know who so directed them?

A I don't know. I think another member of our staff had issued those instructions.

Q And do you know whether that instruction was issued?

A I believe it was the first day of the sit-in.

Q The first day?

A Yes.

Q Do you know what time of the day, of the first day?

A This I do not know.

Q Do you know if prior to the first day, the time when this order or directive was instituted, to your own knowledge, whether any persons of the general public attempted to go through the waiting room and were blocked by any members of the delegation?

A To my own knowledge, no.

Q Now, sir, you say that at approximately eight o'clock in the p.m. of Monday, the 17th of October, that the Commissioner, Commissioner Shemin, stated that these persons were no longer permitted to be on the premises and that they should leave; is that correct?

MR. GALLINA: That's a misstatement. Can I have the direct -- That's not the matter in evidence.

THE COURT: What is the correct?

Q What is the correct statement, if you recall or to the best of your knowledge?

A If I may, I would prefer to rely on exactly what the record says.

Q Well, paraphrase. I am not saying you are contradicting. Just for my own knowledge.

THE COURT: Can you recall what you said? In substance?

THE WITNESS: Are you referring now to what Commissioner Shemin said to Mrs. Mage and her group at approximately eight o'clock on Monday, October 17th?

MR. MARLOW: Yes.

A Yes. He stated to Mrs. Mage that the City Labor Department had tolerated about enough, and that he had no alternative except to have them removed from the premises.

Q And approximately how much time elapsed between that statement and the time that these individuals were actually arrested?

A Approximately five minutes. Commissioner Shemin gave them that much time.

Q And you say in the intervening time some persons did leave; is that correct?

A That is correct.

Q You also stated that there was clothing and other personal belongings around; is that correct?

A That's correct.

Q Of your own knowledge, did you see anyone attempting to start packing up to leave?

A Oh yes. Virtually all of the people were interested in taking their belongings, their personal necessary belongings.

Q You saw them packing up?

A They were proceeding to do that, but they were stopped by Captain Howe who told them that k the property, the personal property would have to be taken to the -- placed in the custody of the Property Clerk of the Police Department.

Q And they were then placed under arrest; is that correct?

A That is correct.

MR. MARLOW: I have no other questions.

THE COURT: Thank you, sir.

MR. GALLINA: I have one; just one concerning a statement made Monday at approximately four o'clock.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q Were you present when the Commissioner made a statement on Monday at approximately four o'clock concerning his decision?

A I have no recollection.

Q If I may -- If I may refresh your recollection -- Tuesday. Tuesday. Tuesday at approximately four o'clock, a statement that the Commissioner made to the body of the defendants present?

A I can't recall, sir.

Q You can't recall?

A At this time.

MR. GALLINA: No further questions.

MR. MARLOW: No other questions of this witness.

MR. GALLINA: I have no other questions.

THE COURT: If he can't recall if he was present when the Commissioner made a certain statement which we permitted him to reproduce, what's the basis for his testimony?

Q Can you recall being present when the Commissioner made a statement to the group on Tuesday?

THE COURT: I think you told us you heard him say that. On that basis I permitted you to tell us.

THE WITNESS: If I could -- If I were given an indication as to what the statement was, perhaps that would refresh my recollection.

THE COURT: What was the statement?

Q Were you present when the Commissioner entered the inner reception room and made a statement concerning the finality of his decision?

A I don't think I was present at that time.

THE COURT: It's still pretty vague. I don't know what you mean by the finality of his decision.

MR. GALLINA: Without leading --

THE COURT: Strike all the testimony out beginning with the redirect. Strike it all out. I don't think it has any value. It adds nothing.

MR. GALLINA: No other questions.

MR. MARLOW: No other questions of this --

MR. GALLINA: People's case.

THE COURT: Defendants, I take it, don't want to make any statements.

MR. MARLOW: We have witnesses to call.

THE COURT: You have witnesses. Once again it's getting near three-thirty.

MR. MARLOW: Do you want a break?

THE COURT: I have other cases. How long were you going to be again?

MR. MARLOW: I have these two witnesses, Your Honor.

THE COURT: Will you give me any idea?

MR. MARLOW: About half an hour each witness.

THE COURT: Let's adjourn everything else then.

MR. MARLOW: Should we step back?

THE COURT: No. Stay right there.

MR. MARLOW: Could I just get a drink of water?

THE COURT: Why, of course.

(case set aside and recalled)

COURT OFFICER JOHNSTON: Case on trial.

THE COURT: All right, now. The defendants, of course, don't want to make any statements. You are calling witnesses.

MR. MARLOW: My first witness will be Commissioner Shemin. Commissioner.

COURT OFFICER JOHNSTON: Step up; face the Judge and raise your right hand.

THE COURT: Do you swear to tell the truth, the whole truth, and nothing but the truth?

COM. SHEMIN: I do.

COURT OFFICER JOHNSTON: Be seated. In a loud voice, what is your name?

COM. SHEMIN: Henry Shemin, 31 Ocean Parkway, Brooklyn, New York, 11218.

COURT OFFICER JOHNSTON: Your business or occupation?

COM. SHEMIN: Commissioner of Labor of the City of New York.

HENRY SHEMIN, being called as a witness in behalf of the defendants, being duly sworn by the Court, upon being examined, testifies as follows:

DIRECT EXAMINATION

BY MR. MARLOW:

Q Commissioner, thank you for being here, and I am sorry to have taken up your time with the subpoena. Commissioner, on the first day, Tuesday, the 11th of October, were you in your office at approximately 11 or 11:30 in the a.m. of that day?

A I was.

Q And at that time did you have an occasion to have a conversation with one Judy Mage?

A I had a conversation with Mrs. Judith Mage on that day. Whether it was at 11, 11:30 in the morning or at 2 or 3 in the afternoon, I am not sure, but I do know about the conversation, and I do know what took place.

Q Fine. Could you please tell the Court what if anything you said and what if anything was said to you during that conversation?

A Mrs. Mage requested that the department reconsider and I reconsider a decision we had made on September 29th. I told her that after a full reconsideration of it, we were adhering to the original decision, and that was the final decision.

Q To the best of your knowledge, did you make any statement to the entire delegation at that time or any time during that day?

A I did.

Q Would you please tell us approximately what time, if you can recall, you made that statement, and what if anything you said?

A I cannot recall the time. All I did say, that we had reviewed the matter thoroughly, carefully, and fairly, and that we are abiding by the former determination.

Q Now, Commissioner, to the best of your recollection, do you recall approximately what time this delegation arrived at your office, that is, into the public hallway and into the inner waiting room?

A It may have been somewhere around the noon hour.

Q Around the noon hour. Now, to the best of your knowledge, do you know how they gained access to your waiting room?

A Oh, when Mrs. Mage came in.

Q Not to your office, to the waiting room?

A I don't know. I assume they went off the elevator.

THE COURT: If you don't know, the answer is you don't know.

THE WITNESS: Thank you.

Q To the best of your knowledge, was the main door downstairs open to the general public?

A It was.

Q And to the best of your knowledge, were the public elevators at that time operating and open to the general public?

A I was --

THE COURT: Do you need all that?

MR. MARLOW: Yes; I do.

THE COURT: Is there any question that they had a right to come in? Is there any question?

MR. MARLOW: Well, this is what I am trying to establish for the record.

THE COURT: If they had a -- I suppose they had a right to come in and discuss something with the Commissioner. If you don't want to stipulate, you don't have to, that these -- that Mrs. Mage and her group had a right to come in in the first place.

MR. GALLINA: They had a right. They had a lawful right to come in with a lawful intent.

THE COURT: That's all you want.

MR. GALLINA: We will stipulate to that.

THE COURT: If it's unlawful, the Court will have to determine. If you are assuming there was an unlawful intent -- They had a right to come in and talk to the Commissioner. There is no question about that.

MR. MARLOW: Fine.

Q Commissioner, to the best of your knowledge, on Tuesday, did you ever tell these persons to leave the general offices?

A On Tuesday I do not think I did.

Q Now, Wednesday was a holiday. To the best of your recollection, were you present at your offices on that date?

A I was not.

Q On Thursday, then, to the best of your recollection, did you have any conversations whatsoever with either Mrs. Mage or any member of the delegation?

A I did.

Q Will you please tell us exactly -- approximately when and approximately the contents of the conversation?

A On Thursday, I believe it was around three p.m., Mrs. Mage was in my office.

THE COURT: This is the thirteenth now?

THE WITNESS: The thirteenth.

THE COURT: Three p.m.

A I believe Commissioner and Counsel Philip Ruffo was there, and if my recollection is correct, I think Mr. Ernest Fleischman (phonetic), a lawyer for Mrs. Mage was present.

Q To the best of your recollection, do you recall what the conversation was which took place at that time?

A I do.

MR. GALLINA: Objection.

THE COURT: I will allow it.

A I told Mrs. Mage that the people sitting out in the waiting room were becoming noisier and noisier as time went on, that they were no longer petitioning for a review, that such a review could be obtained by utilizing the normal processes of the court, namely through an Article 78 proceeding, whereupon Mrs. Mage told me she does not trust the courts. I told Mrs. Mage at that time that by continuing this noisy demonstration in the waiting room, she was pursuing a proceeding which was contrary to our traditions, our American systems of jurisprudence, and that she was attempting to supplant the making of decisions in that they wanted to make decisions rather than permit me to make the decision, and I told her in no uncertain terms that they should leave.

Q You told them to leave right then and there?

A I did.

Q Did you ever tell the demonstration this?

A I did.

Q Approximately when?

A I could not pinpoint the exact minute in time, but with Mrs. Mage there either on -- at that point or an hour later, I stood before them and told them that they were violating the peace and quiet of the office and they should leave.

Q Now, if I am mistaken please correct me. Isn't it a fact that when you made that statement to this delegation on Thursday in the afternoon, members of the press and radio and TV were present?

A Whether they were there at the time I made the statement, I am not sure. They were present at sometime.

THE COURT: When your answer --

A (continuing) My recollection is they were not.

THE COURT: Your answer is you are not sure. Your recollection is they were not present when you made these statements.

Q This statement to the delegation was made where?

A The statement to the delegation was made right in the waiting room.

Q In the waiting room?

A My recollection is that we were then talking to the delegation without any members of the press.

Q In your discussion with Mrs. Mage and her attorney, do you recall whether the question was raised of rather than going to court, submitting this to arbitration, and a discussion was had with you on that date about submitting this matter to arbitration?

MR. GALLINA: Objection.

THE COURT: Objection is sustained; again, you see, you are on this question which to me doesn't seem crucial, the fact. The question of how they behaved themselves at the time, that's all.

MR. MARLOW: All right, Your Honor. May I for purposes of the record just have an exception?

THE COURT: Yes, sir.

MR. MARLOW: Thank you.

THE COURT: You may have your exception, by all means.

MR. MARLOW: Thank you.

Q Now, sir, on Friday of that week, do you recall being present at any time or having any conversations with either Mrs. Mage or any members of the delegation?

A I was present on Friday, October the 14th all day. I don't recall any conversation with them.

Q Do you recall telling them on the Friday of that week that they should leave?

MR. GALLINA: Objection. Leading question.

THE COURT: What?

MR. GALLINA: Leading question.

THE COURT: This is a hostile witness. I will permit him to lead . What was the question?

MR. MARLOW: I asked him if he recalled at any time Friday of that week asking this delegation to leave his office.

THE COURT: Do you recall that?

A I don't recall.

Q Saturday and Sunday were you present at your offices?

A I was not.

Q Monday, the final day, do you recall when the first time that you had a conversation with either Mrs. Mage or the delegation took place?

A I had. To my recollection, they were told during the day to leave, and then I spoke to them later that night at about eight to eight-thirty.

Q And do you recall what if anything you said to them, and what if anything they said to you?

A I am clear as to what occurred that night at eight to eight-thirty. I specifically told them that they were trespassing, that they were conducting themselves in obstreperous, noisy manner, that they were interfering with the operations of the office, and they should leave, and if they did not leave, the police at my request would make an arrest.

Q Now, sir, to the best of your knowledge, did you have occasion to observe personally whether any members of the general public were forced to use a means of access to your office other than the normal means of access during this week period?

A I did.

Q Would you please tell us on what occasions you observed persons being refused access?

A I did not say that I observed persons being refused access. I think your question related to --

THE COURT: The question was did anybody there on normal business have to be diverted to another route.

THE WITNESS: That is what I understand was --

THE COURT: Will you answer that, what you observed?

Q Will you please tell us on what occasions you observed persons being direct through another area?

A On going out of my private office, I saw persons whom I knew had business with the department going through a door from the general outer space, next from the public hallway going to a narrow corridor to get around the waiting room to come to the executive section of the department.

Q Do you know of your own knowledge whether these same persons attempted to find direct access through the normal means or channels to enter your office?

A I don't know that.

THE COURT: Let's put it this way: What was the condition of that waiting room at the time you saw those persons using this narrow corridor?

A At that time when I observed this person using the narrow corridor, the doors leading to the waiting room had signs and placards, right inside the door some of the girls had been hanging some of their underthings, stockings.

MR. MARLOW: If I may, this doesn't really --

THE COURT: This is my question.

MR. MARLOW: But the point is --

THE COURT: If you have any objection, object. This is my question.

MR. MARLOW: I am afraid to object. I will withdraw it.

THE COURT: Why do you say you are afraid to object? The worst that can happen, I will overrule it.

MR. MARLOW: I object.

THE COURT: I don't know why you should be. Is there something so fearsome or awesome about my presence?

MR. MARLOW: I will object.

THE COURT: Objection is overruled.

BY THE COURT:

Q Mr. Commissioner, tell us what you saw at the time that you saw these persons, or person or persons, who were there on normal business?

A These persons.

Q We know they were diverted to another route. Now, what was going on in the normal area of access?

A In the normal waiting room they were sitting.

Q By "they" do you mean -- Let's call them the occupation force, if you want, just as a tag. It has no other significance.

MR. MARLOW: Can we call them the delegation?

THE COURT: If you wish. All right, if you wish "the delegation", I have no objection, so long as we know what the tag refers to, or whom rather the tag refers to.

A They were sitting and sprawled in such a manner across the waiting room that it was self-evident that no one could proceed in their usual and normal fashion through that waiting room to reach the executive part of the department.

BY MR. MARLOW:

Q Did you see anyone attempt to do so?

THE COURT: You can answer that yes or no.

A No.

THE COURT: Next question.

MR. MARLOW: No other questions.

THE COURT: Thank you, sir.

MR. GALLINA: One question.

CROSS EXAMINATION

BY MR. GALLINA:

Q On Tuesday afternoon, after you had spoken to the representative or the person who was the spokesman for these defendants, Mrs. Mage, did you have an occasion to address the group of defendants in the inner waiting room?

A I did.

Q What did you tell them at that time?

A I told that group specifically what I had told Mrs. Mage privately. I thought that they should know that the decision --

THE COURT: All we want to know, what you told them.

A I told them that the decision we had made was final. I told them that they had a remedy to review that decision in the normal way, namely, through an Article -- I didn't use "Article 78" for them, but through a court proceeding, which would be the normal and traditional method of doing this, and I told them that they were behaving obstreperously and noisily, and they should leave.

MR. GALLINA: I have no further questions.

MR. MARLOW: No other questions of this witness.

THE COURT: Thank you, Commissioner.

MR. MARLOW: Thank you, Commissioner. I have just one other witness, Your Honor.

THE COURT: Who is that, please?

MR. MARLOW: Goodman.

THE COURT: That's Peter Goodman, is that?

MR. MARLOW: Thank you.

THE COURT: Does somebody have the other

affidavit?

MR. MARLOW: Yes.

COURT OFFICER WALL: Raise your right hand and face the Judge.

THE COURT: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MR. GOODMAN: I do.

COURT OFFICER WALL: Be seated, please. In a loud and clear voice, what is your name?

MR. GOODMAN: Peter Goodman.

COURT OFFICER WALL: And your address?

MR. GOODMAN: 34 Livingston Street, Brooklyn, New York.

COURT OFFICER WALL: And your business or --

MR. GOODMAN: Executive Secretary of the New York City Department of Labor.

PETER GOODMAN, being called as a witness in behalf of the Defendants, being first duly sworn by the Court, upon examination, testifies as follows:

DIRECT EXAMINATION

BY MR. MARLOW:

Q Mr. Goodman, if you would, when was the first day during which you had any conversations between yourself and this delegation or any members of the delegation?

A October 11th.

Q That would be Tuesday?

A Correct.

Q Would you recall approximately what time that was?

A Conversations?

Q Yes. Or if you could, was it in the morning, the afternoon?

A Late afternoon.

Q Do you recall the substance of what you said and what was said to you?

A I --

MR. GALLINA: Objection. I object at this time on the basis if it's a statement that he wishes to use this witness to present that would serve the defendant -- I object to it on the basis of self-serving declaration, not an exception to the hearsay rule.

THE COURT: I will allow it. You may move to strike it if it's going to be self-serving, but I'd like to hear it anyway.

Q What did you say to the persons, and what if anything did they say to you?

A This was late in the afternoon.

THE COURT: What day is this, now?

MR. MARLOW: Tuesday, the 11th.

THE COURT: Tuesday is the 11th.

MR. MARLOW: The first day.

A It was nearer to the close of business on that date; the staff was preparing to leave. I had set up duty rosters for our staff, the Labor Department staff, to stay with the defendants during the evening and next day which was a holiday. I had a conversation with Mrs. Judith Mage at the time, at which I discussed the possibility of her group confining themselves to particular areas and to limiting their access, particularly to the library, the City Labor Department library, which contains some very valuable and unique features.

THE COURT: Limiting their access to

the library? I am afraid I don't follow you.

A The library, Your Honor, is situated adjacent to the waiting room.

THE COURT: I understand the library is somewhere in the area, but I don't know, don't understand what you mean by limiting their access.

A What we wanted to do was close off the library, so that if they were going to stay, nothing in the library would be --

THE COURT: In other words, they were not to enter the library?

A Right.

Q You were setting up an area in which they were to remain; is that correct?

A Yes.

Q At whose direction did you undertake this procedure?

A My own direction.

Q Did someone stay with this delegation during the evening?

A Yes.

Q And to the best of your recollection, who stayed with them?

A Well, I believe that in the early part of the evening until -- I myself could not stay there since I am a student in the evening, and I believe Estelle Karp our senior mediator stayed with the group until ten p.m., at which time I relieved her and she left.

Q To the best of your recollection, were there any conversations between yourself and this delegation during the time you were there after the close of your regular office hours?

A Myself?

Q Yes.

A At one time or another, about various things like staying in particular area; yes.

Q Were there any discussions as to the labor dispute itself?

A Any discussions that I might have had about the labor dispute, might have occurred; however, I am not empowered by the Commissioner.

Q I am asking did you have conversation?

THE COURT: That's not the question.

Did you talk about the labor dispute, so called?

A Yes.

THE COURT: You did.

Q Now, on Wednesday, that was a holiday?

A Correct.

Q Was your roster set up to include Wendesday, also?

A Yes; it was.

Q So you had persons present during Wednesday; is that correct?

A That is correct.

Q Were you present on Wednesday?

A For part of the time; yes.

Q Now, do you recall or do you know of your own knowledge who were present when you were not present?

A Yes. Yes; I do.

Q Could you tell us who was present when you were not present?

MR. GALLINA: Your Honor, I am going to object to this matter as --

THE COURT: I think it's quite relevant.

MR. GALLINA: It's relevant, but only for the People's case. This is not defendants' evidence.

THE COURT: It's his witness.

MR. GALLINA: He is using it as a discovery situation.

THE COURT: He called this witness. He is entitled to question her. Objection overruled.

MR. MARLOW: Thank you.

Q Do you recall who were there besides you, or who was there when you were not there?

A I have a written memorandum to that effect.

Q To the best of your recollection, if you can recall?

A On that particular day, I believe, Mr. Harry Stiefel; and later on that day, Mr. Peter Zito.

Q Were you there at any time?

A Yes; I was. I was there until ten a.m.

Q Thursday morning?

A No; this was Wednesday morning.

Q You stayed over Tuesday night?

A I stayed over Tuesday night. I was relieved at ten. There were some other people; members of our staff that relieved each other.

Q Did you come back?

A I believe I came back.

Q To the best of your recollection?

A I think I stayed that Wednesday night also; yes.

Q To the best of your recollection, when you -- if you did return on Wednesday evening, do you recall if you had any conversations with this delegation?

MR. GALLINA: Your Honor, irrelevant; objection.

THE COURT: Well, I will allow it. Did you have any conversation with the delegation Wednesday night?

A I don't remember whether -- which night, since it's spread over six days.

THE COURT: Your answer is you don't remember with respect to specifically Wednesday night.

Q Thursday evening, was the same procedure in effect?

A Same procedure.

Q Yes; at whose instance was this procedure put into effect?

A At mine.

Q To the best of your knowledge, did the Commissioner and the Deputy Commissioner know the fact that you had worked out a duty roster for people to be in attendance with these people in the evening?

A Yes, sir; they did.

Q And were you present on Thursday evening?

A I cannot recall with regard to that particular evening.

Q Do you recall -- withdraw that question. On Friday evening, was the same procedure in effect?

A Yes.

Q And on Saturday evening?

A Yes.

Q And on Sunday evening?

A Yes, sir.

Q Now, on Sunday evening, did you recall having a conversation with Mrs. Judy Mage and members of the delegation?

A Yes, sir; I do.

Q Would you please tell the court what if anything you said to this delegation, and what if anything they said to you?

MR. GALLINA: Objection; irrelevant, Your Honor.

THE COURT: Overruled.

MR. GALLINA: He has -- May I just make a statement on the record, that he has already testified that he was not empowered to act for the Department of Labor, the Department of Labor head and its other executive heads.

THE COURT: His statement is not necessarily conclusive.

MR. GALLINA: This is his witness, and any statement which would be in favor would be self-serving.

THE COURT: (continuing) Not necessarily conclusive, because this is only, at best, an impartial presentation of the case. I will allow it.

Q If you recall, please --

THE WITNESS: If Your Honor would allow, I'd liketo give a little bit of background.

THE COURT: No. No. You have to limit yourself to answering questions.

Q The question was, you stated you had some conversation with them Sunday evening, and I am asking you, to the best of your recollection, to tell the Court what you said to this delegation and what if anything they said to you?

A One of the defendants, I cannot --

THE COURT: That's all right. One defendant.

A -- I can't remember which one --

THE COURT: It doesn't make much difference.

A -- came to them and in a jocular vein said to me, Well, would you people consider arbitration? And I said, also in a jocular vein, Why not? If I were Commissioner, I think my exact words were, If I were Commissioner of Labor, I might consider it.

THE COURT: All this you say was, as you put it, in a jocular vein?

A Yes.

THE COURT: By this time you had all become friendly, I gather?

MR. MARLOW: Bed fellows, I imagine.

A This was approximately two a.m. on Monday.

THE COURT: Two a.m.?

A Two a.m.; yes.

Q Now, just my final question.

A May -- I did --

Q I am sorry. I didn't mean to interrupt you.

A At this point Mrs. Mage approached me and said, Well, are you serious about this? Are you empowered by the Commissioner of Labor, Mr. Shemin, to offer us arbitration? And I told her no, I am not empowered. I am not in this position to make it. I have never been in this position. I have only been with this department since April 11th. The primary function --

THE COURT: I think you have made the point; it was two o'clock in the morning.

Q This was just a conversation?

THE COURT: That in itself is the index of the light mindedness, I think, of the occasion; plus your own apt description that it was in a jocular vein. I take all these factors into account.

Q One final question, if I may.

THE COURT: Go ahead.

Q (continuing) You say you are Executive Director?

A Executive Secretary.

Q Would you please just outline for us, what are your duties?

A Primarily my function is that of public relations officer for the department.

MR. MARLOW: I have no other questions.

THE COURT: Thank you. Any questions?

MR. GALLINA: Just two or three.

MR. MARLOW: May my co-counsel ask a question?

MR. NAGLE: May I have one moment, please?

MR. GALLINA: I intend to make a request of the Court at the end of this hearing --

THE COURT: So late?

MR. GALLINA: -- in this case, and therefore I have to ask these questions.

THE COURT: Are you still in it?

MR. MARLOW: We are fine.

THE COURT: No questions?

MR. MARLOW: No questions.

THE COURT: Go on, Mr. Gallina.

CROSS EXAMINATION

BY MR. GALLINA:

Q In your capacity as executive secretary, do you have knowledge as to whether these defendants caused any injury or damage to the premises or to the capital of the Department of Labor?

MR. MARLOW: I will object to that. It's not contained within the information. It goes outside the information and the charges against these defendants.

THE COURT: I will allow it. I think that it's a form of normal outgrowth possibly of too zealous occupancy. I would allow it. I don't understand why you preface the question, "In your capacity as executive secretary". Why can't he testify in any capacity.

Q Do you know?

A Yes.

Q Will you tell us what the total amount of such damages and injuries were?

MR. MARLOW: I will object to that unless foundation is shown that he is --

THE COURT: Objection is sustained.

Q Will you tell us what those damages and injuries are?

A Approximately --

THE COURT: That you observed yourself.

A Approximately fifteen members of our staff endured great hardship.

MR. MARLOW: I will object to this, Your Honor, and I will have to ask that be stricken.

THE COURT: Excuse me.

MR. MARLOW: I am sorry.

THE COURT: I will let him finish, but that, so far, I would strike. It's too vague, too general.

Q Tell us what has happened?

THE COURT: Something more objective. That's a subjective view, your thought about someone's enduring hardship. Someone else might look at the same people and feel they experienced a great job as a result of the company.

A Approximately fifteen members of our staff put in service beyond normal working hours, including week-ends and evenings, and a holiday.

Q What did this cost the Department of Labor approximately?

MR. MARLOW: I will object to that. There is no foundation that he is the bookkeeper or accountant.

THE COURT: Do you know whether or not the Department of Labor had to pay extra salaries?

THE WITNESS: Yes, sir; I do.

THE COURT: As a result of your personnel having been assigned beyond the normal duty hours?

THE WITNESS: Not salary, Your Honor, since the City does not pay actual cash for overtime, but compensatory.

THE COURT: They got compensatory time?

THE WITNESS: Yes.

THE COURT: Very well.

Q In what value?

MR. MARLOW: I will object to that.

THE COURT: Objection sustained.

Q How many hours?

A Approximately one-hundred-forty-five hours.

THE COURT: One-hundred-forty-five hours of compensatory hours.

Q Were there services or fees paid for due to the defendants' occupancy of the premises?

MR. MARLOW: I will object to this. First of all, there is no foundation that he knows this of his own knowledge; and second of all, it's outside the limits of the information. The information is for trespass on realty.

MR. GALLINA: Unlawful intent.

MR. MARLOW: Never to pay extra money. It's outside of the confines of it.

THE COURT: I think it's sufficiently related to the central issue. I will allow it. If you know?

A One-hundred-eight dollars even was laid out by the Comptroller's Office for expenses.

THE COURT: What sort of expenses?

A Supper money, travel expenses, telephone and miscellaneous.

THE COURT: For your staff?

A For our staff.

THE COURT: For the Labor Department?

A That's correct. In addition to that, there was some paint chipped and some -- there might have been some furniture weakened, although I cannot be sure.

THE COURT: What there might have been, we don't want; only what you know.

Q Isn't it a fact that the duty roster was organized by yourself, and with the authority of the Commissioner, in order to protect the offices while these defendants occupied it?

MR. MARLOW: Objection. I will object to that -- if he can answer that.

THE COURT: If he knows that was the purpose, because we can't have a state of mind. Do you know?

THE WITNESS: Yes, sir. Whether the --

THE COURT: Whether the purpose of assistance by your department was to protect the area and the operation?

THE WITNESS: Yes, sir.

THE COURT: You say "Yes, sir". That was the purpose of the aid you were giving.

Q Isn't it a fact you attempted to confine the areas to certain areas, so as to limit the disorder and damage that was occurring?

MR. MARLOW: I will object to that; that assumes that damage was occurring.

THE COURT: Yes. Just the first part of it. Isn't it a fact that you were disposed to limit the delegation, we decided to call them, with respect to their space they occupied in your quarters?

THE WITNESS: Yes, sir.

THE COURT: We'll allow it.

MR. GALLINA: I have no further questions.

MR. MARLOW: No further questions.

MR. GALLINA: People's case.

MR. MARLOW: Both sides -- We rest.

THE COURT: Both sides rest.

MR. GALLINA: At this time I have a request to make of Your Honor sitting here. After an examination of the facts and circumstances in this case, the People believe that by virtue of the defendants' placement of evidence before the People which they were not aware of before by virtue of their witnesses, we believe that there are additional charges warranted within the information, so stated and within the evidence presented today. We believe that Section 2029, subsection 2, Section 2093, and Section 2094 should be added to the complaints in this case. We believe also that a count of malicious mischief should also be added to the complaints in this case. We'd ask you to add those counts at this time.

THE COURT: I was going to say it's merely a matter of, actually, mechanics. You can have new complaints offered.

MR. MARLOW: If he wants to have new complaints drawn, I prefer he do it that way rather than have additional counts added here. First of all, I don't think that the evidence submitted here was sufficient to show violations of the sections. Second of all, that would mean that I am forced to waive my right to have a hearing on those points, and since I did not direct my questions --

MR. GALLINA: We are more than willing to have a hearing in those situations.

THE COURT: I would suggest, if you feel that enough has been brought out to warrant the lodging of additional charges, that you lodge them through the medium of new affidavits. Your application to enlarge these is denied. Now motion at the close of the case. Motion to dismiss?

MR. MARLOW: Yes, Your Honor.

THE COURT: Go ahead.

MR. MARLOW: And I will rely on the record and the testimony that has been presented before Your Honor.

THE COURT: Well, I feel that there is enough to hold the defendants for a full trial.

MR. MARLOW: Fine. Thank you.

THE COURT: You can give me the day that you can agree on.

MR. MARLOW: Your Honor, if I may, please, since we have served two subpoenas in this matter, would it be possible, just to save me some time and energy, to have those witnesses directed that those subpoenas are continuing subpoenas, and that they are subpoenas for this entire action, and not for this hearing, and that they would be required to appear on this date as well as any other date.

THE COURT: Can you possibly make an agreement that their testimony reduced to minutes being handed up to the Court --

MR. MARLOW: There will be other testimony on the trial.

THE COURT: I think probably you had better subpoena them. I don't know when the trials are going to take place. Matters like these can go on and on and on. I would.

MR. MARLOW: I will waive their appearance on any date other than the exact trial date.

THE COURT: But they might not be able to appear on that date.

MR. MARLOW: My problem is, then, a question of subpoenaing each and every day; whatever Your Honor prefers. I would ask Your Honor to --

THE COURT: I would be disinclined to order them in on the trial date. These people are public officials.

MR. MARLOW: I will withdraw my application.

THE COURT: Part 2B-3. That will be the -- I suppose it comes back to this calendar anyway to go upstairs.

MR. MARLOW: We are asking for an early date in February. The reason why we are asking --

THE COURT: If that's agreeable, you don't have to give me --

MR. GALLINA: The first.

PTL. ZABROWSKI: First or second is all right.

THE COURT: How long do you think you will take on a trial? This is in order--

MR. MARLOW: Approximately two days. Could we possibly have --

THE COURT: Then make it the beginning of the week.

MR. MARLOW: Can we have possibly the

sixth? Would that be all right with you?

PTL. ZAMBROWSKI: No; it's my day off.

THE COURT: What would be all right with you? You have, I think, sixth, the 13th, the 20th, the 21st.

PTL. ZAMBROWSKI: I will have to consult after the sixth.

MR. MARLOW: Ash Wednesday is the eighth. Ash Wednesday is the eighth.

THE COURT: How about the last day of January? January 30th?

MR. MARLOW: There is a very serious problem because there are labor negotiations being carried on.

MR. GALLINA: It's not acceptable to myself personally.

THE COURT: He wants the two days. We'll have to have a special bench set up.

MR. GALLINA: Thirtieth or thirty-first.

PTL. ZAMBROWSKI? First or second.

MR. MARLOW: Sixth or seventh, then, Your Honor. If the district attorney wants to be obstreperous, I can be the same way.

THE COURT: First of all, the word "obstreperous" implies a noise volume.

MR. MARLOW: Or difficult.

THE COURT: In ordinary acceptation it applies to someone who is brash and noisy.

MR. MARLOW: I am asking for the sixth or seventh, or thirteenth or fourteenth. It's --

THE COURT: The seventh is Saturday. Can you make it? I have --

MR. MARLOW: Of February.

THE COURT: I am sorry. Sixth or seventh is Monday and Tuesday. I was looking --

PTL. ZAMBROWSKI: Or thirteenth or fourteenth. I can't make either dates. They are my days off, unless Your Honor wants me on the day off.

MR. GALLINA: We'd like it earlier; thirtieth or thirty-first.

MR. MARLOW: Let's make it Ash Wednesday. The eighth I am trying to avoid, if there are people of that faith, so they don't have to come in. I don't know how many times I have to repeat the same date. The thirtieth and thirty-first are no good. If you keep repeating that, as a recording, we are not going to get anywhere. In the early part of the week the --

THE COURT: You can't make it fifth, and the second and third.

MR. MARLOW: That's Thursday, Friday.

PTL. ZAMBROWSKI: I can make Thursday.

THE COURT: If it should carry -- First or second is fine. The first of February is Wednesday.

MR. MARLOW: Fine.

THE COURT: February 1, 1967; all defendants continued and paroled.

MR. GALLINA: May I mention again, without doubt we'll at that time have complaints drawn up for these various sections, Your Honor. I think that if --

MR. MARLOW: I am sorry. That is totally unfair. That means that I am forced to waive my hearing on those two charges.

THE COURT: You had a hearing on the charge.

MR. MARLOW: Not on the hearings of malicious mischief. All we have, he thinks some chairs were weakened.

THE COURT: I really think this is doing too much argument here.

MR. MARLOW: I would strongly --

THE COURT: February 1st, 1967. All defendants are paroled.

MR. MARLOW: Thank you, Your Honor.

MR. GALLINA: Your Honor, the parole should -- The parole has been issued in the past upon condition that none of these defendants set foot in the offices of the Labor Commissioner.

THE COURT: That condition --

MR. MARLOW: Excuse me. There are labor negotiations going on next month. Now, unless they are conducted at the Department of Labor -- If the Commissioner would like to conduct them at a hotel, should there be any reason to be in the Commission, and the District Attorney's Office would like to pay for that, fine.

THE COURT: Well, suppose they come in?

MR. GALLINA: They are not supposed to be into these offices.

THE COURT: Suppose they come in and do the same thing, hang up clothes, cook?

MR. MARLOW: They will not be there unless invited to be there. But if they are forced to be there because of a labor dispute, and it's going to be negotiated, they have to be there.

THE COURT: All right.

MR. MARLOW: Thank you, Your Honor.

THE ABOVE IS A TRUE AND CORRECT TRANSCRIPT OF THE MINUTES IN THE CASE.

Arnold Warshawsky
OFFICIAL COURT REPORTER

PARTICIPANTS IN THE SLEEP IN ASPECT OF THE PROTEST AT THE DEPARTMENT OF LABOR - 93 Worth Street, 5th floor, from October 11, 1966 to October 17, 1966

NAMES:	DATES: 10/11/66	10/12/66	10/13/66	10/14/66	10/15/66	10/16/66	ARRESTED 10/17/66
Judith Mage	X	X	X	X	X	X	X
Judith Kahan	X	X	X			X	X
Elinor Kass	X	X	X	X	X	X	X
Stephanie Oursler	X	X	X	X	X	X	X
Barry Gorden	X	X	X	X	X	X	X
NIls Brunner	X	X	X	X	X	X	X
Jan Schleicher	X	X	X	X	X	X	X
William Schleicher	X	X	X	X	X	X	X
Mark Kirszner	X	X	X	X	X	X	
Bernard Cacchione	X					X	X
Ray Wolfson	X	X	X	X	X	X	
Dorothy Soffer	X					X	
Madeline Miller	X	X		X	X	X	X
Allan Friedman	X	X	X	X	X	X	
Sandra Katz	X	X					X
John Sebyanics	X						
Richard Machell	X						
David Jackness			X				
Gloria Mason			X				
Gerald Landry	X	X	X				
Joseph Sperling			X	X			X
Ray Riccio	X	X					
Sandy Boyer	X	X	X	X	X	X	
Kathy Fantazzi			X	X	X		
Robert Croghan			X				
Larry Berkowitz			X	●	X	X	X
Patrick Knight				X	X		

	10/11/66	10/12/66	10/13/66	10/14/66	10/15/66	10/16/66	ARRESTED 10/17/66
Betsy Kuhn				X	X	X	X
Gene Gordon				X	X	X	
Ted Chabasinski						X	
Sam Mazen						X	X
Jay Bitkower						X	X
Lucy Flynn						X	X
Dennis Cribben						X	X
Dennis Jamieson						X	
Ida Falk						X	
Carol Turner						X	
Kathy Fritz						X	X
Barbara Schecter							X
Shain MacClean							X
Bill Dudan						X	X

OFFICERS AND THEIR ASSISTANTS AT THE TIME OF THE ARREST

Judith Mage, President

Bernard Cacchione, 1st V.P.

John Benson, Ass't To 1st V.P.

Sandy Boyer, Ass't to 1st V.P.

Frank Flores, Ass't to 1st V.P.

Al Alexander, Ass't to 1st V.P.

Barton Cohen, 2nd V.P.

Jack Reubens, Ass't to 2nd V.P.

Klyde Singelton, Ass't to 2nd V.P.

Gloria Mason, 3rd V.P.

Elaine Paul, Ass't to 3rd V.P.

Judith Kahan, Corresponding Secy.

Edward Perlmutter, Treasurer

LOG OF "THE WAIT - IN" AT THE DEPARTMENT OF LABOR - 93 WORTH STREET, N.Y.C. 5th Floor from October 11, 1966 to October 17, 1966

TUESDAY, OCTOBER 11, 1966:

8:30 a.m. - 10:00 a.m.

150 to 200 employees of the Department of Welfare picketed the Department of Labor at 93 Worth St., N.Y.C.

10:00 a.m.

A delegation of approximately 30 to 40 persons went to meet and to present to Comm. Shemin (D.L.) new evidence re: the petition to have an election for supervisory ~~titles~~ in the Department of Welfare. The evidence: ~~was that~~ the Dept. of L. was permitting an election for Homemakers in the Department of W. after 10/15/66. This was ~~which appeared to be~~ in contradiction to ~~of~~ the Contract Bar Policy - the procedure, which was quoted fof refusing an election for employees in the Supervisory title in the Department of Welfare.The date for the homemaker election was later set for 11/4/66.

- **NOTA BENE:**

The employees of the D.W. who went to meet with Comm. Shemin stood in front of his office and refused to move. Shemin requested ~~they~~ that we go to a conference room on the other side of the 5th floor. Delegation refused.

Further, those who had participated in the demonstration and were part of the delegation had only taken 2 or 3 hours annual leave and some a day off. Noone planned to stay beyond a few hours. Except for Stephanie Oursler, noone had taken more than one day annual leave. Miss Oursler had taken the leave for purposes other than the demonstration.

10;15 a.m.

Comm. Shemin invited the delegation into his office. Cameramen and newsmen also entered the Comm.'s office.with the delegation. ~~I~~ We discuss~~ion ensue~~d the election and ~~were~~ presented additional petitions ~~were handed~~ to the Comm. Most of the interview was taped by ~~newsmen~~ cameramen.

10;35 a.m.

Comm. Shemin ~~then~~ asked that we leave the office: "I can't do my work if you stay in my office." He advised that we could remain in the waiting room while he reviewed the Contract Bar Policy and re-evaluated our new evidence. We debated whether we should remain in Shemin's office or retire to the waiting room. The debate took place in front of the newsmen. We decided to wait in the waiting room. At that time we advised the N.Y.Times that this was a"wait in."

The majority of the delegation sat in the waiting room talking and playing cards. Judith Kahan, John Kailin, John Talbutt, and Gerald Landry went into the Libray adjoining the waiting room. Mr. Tony Scott, office manager, objected to our sitting in the library. He called in Dr. Toya, director of research, who also objected. Judith Kahan told Dr. Toya that she was head of the research committee for the SSEU and was interested in preparing a list of publications that would be of value to this committee. After much discussion Dr. Toya stated that we would remain in the library. J. Kahan advised that she would assume responsibility for the library, Dr. Toya agreed. Lists were prepared of the publications. Please note the attached.

12:00 a.m. - 2:30 p.m.

Stephanie Cursler, Sandy Boyer, and Bernard Cacchione left the building and later returned to eat and buy books.

3:45 p.m.

Comm. Shemin and Mr. Ruffo, council to the D.L., came into the waiting room (they stayed on the other side of the divider) and asked us to quiet down. We gathered around and were informed that the D.L. had looked into our new evidence and did not consider it relevant to our case. They DID NOT ASK US TO LEAVE. Mrs. Judith Mage and John Talbut questioned both the Comm. who kept deferring to Ruffo re: the Contract Bar Policy and the insultated period ~~stated in~~ of that policy.

We decided to wait for a more serious discussion of the issue.

4:30 p.m. or 5:00 p.m.

Elaine Paul, Elinor Kass, Madeline Miller, Barry Gordon and some others left the building and went to buy, at Model's, blankets ($1.98 a piece), food paper, cards, and pillows. They returned before 5:00 p.m.

4:300p.m.

Judith Kahan and Sandra Katz went shopping for clothes in a near by store.

They returned prior to 5:00 p.m.

5:00 p.m.

An argument then ensued re: the occupation of the library. The City requested that they wanted to close the library. Mrs. Mage ~~stepped in and~~ told Mr. Peter Goodman, Exec. Sec., and Tony Scott that the SSEU would assume financial responsibility for anything missing. Mr. Goodman and Mr. Scott accepted Mrs. Mage assurances and permitted members of the delegation to occupy the library. It should be noted that a policeman was assigned to the 5th fl. from 10:00 a.m. & thereafter on a 24 hour basis.

5:00 p.m. - 6:00 p.m. Dave Jackness, G. Landry, and J. Kailin left building and returned.
6:30 p.m. Left to purchase food.

Mr. Victor Gottbaum, Ex. Dir. of D.C. 37, appeared followed by Barry Feinstein of Local 237 I.B.T. PLEASE NOTE THAT BUSINESS CONTINUED AS USUAL. Mr. G. had come to discuss with Mr. Shemin the election in the housing authority. Mr. Feinstein was invited to have some of the SSEU food, which he accepted.

7:30 p.m.

Mr. Mark Kirszner over heard in the men's room Mr. G. telling Mr. S. "when people want an election, you ought ta given em one."

7:30 p.m.

Mr. G. came into the waiting room. Mr. G. through us his usual kiss. Mrs. J. Kahan began to kiddingly shadow box with Mr. G. Mrs. K. asked Mr. G. " who you selling out today, your mother." Mrs. K. then punched Mr. G. in the stomache and slapped him in the face. Mr. G. turned slightly green and left. Mr. G. was quite upset as Mrs. K. and Mr. G. had walked on the same picket line (250 Church St., N.Y.C) during the 1965 Strike in the Dept. of Welf.

APPROX. 7:30 p.m.

Comm. S. departed thru a side door, without asking us to leave. Mr. Peter Goodman and Miss Karpf from the D.L. was assigned to watch us. There was a policeman also assigned.

8:00 p.m.

Allan Friedman asked Peter Goodman if he could use the D.L. phone and if he could receive a delivery (his guitar). Mr. G. allowed Mr. F. to use the D.L. phone.

Mr. Goodman said to Mr. F. " you certainly can."

12:00 p.m. - 2:00 a.m.

Members of the delegation went to sleep. They slept in the waiting room, the library, and the ante room at the other end of the hall. They slept without mattresses. They used the purchased blankets and their coats.

WEDNESDAY, OCTOBER 12, 1966: Legal Holiday, Columbus Day.

NOTA BENE:

The building was locked, however, persons were permitted in and out of the building by the janitor who often kept his keys in the door. Approx. at 10:00 a.m. S. Oursler noted ~~that~~ persons, who were not part of the wait-in, entering the building.

1:00 a.m.

Allan Friedman went to the lobby and received from his friend his guitar and cigarettes.

Miss Karpf left the building.

7:00 a.m.

Persons started to rise.

10:00 a.m. - 1:00 p.m.

Concession in lobby was opened. Food was purchased.

10:00 a.m.

25 cup urn of coffee was delivered to the members of the wait-in from a near by coffee shop.

10:00 - 12:00 a.m.

Sandy Boyer and Bill Schleicher investigated the basement. However, they believe that personnel from the D.L. ~~is and was~~ were not aware of this activity.

11:00 a.m.

Sandra Katz's roommate came to the 5th floor with ~~delivered~~ food.

4:30 p.m.

Judith Kahan went down to the lobby and received from her husband two sleeping bags and a change of clothes. At that time a man from Medel's delivered 17 air-mattresses which were given to Mrs. K. The janitor opened the door for these deliveries. The janitor at that time stated "Goddman it I'm not going to keep opening these doors. Why don't they all go to Lindsay's office and bother him."

AFTERNOON:

Mrs. Mage typed the leaflet on the D.L. typewritter. She received permission from Peter Goodman.

In the afternoon members of the waitin wrote the songs of protest.

6:00 p.m.

Ate

6:30 p.m.

Cleaned up. PLEASE NOTE. Those participating in the wait-in cleaned the area they occupied twice and sometimes three times a day. This included stacking all the sleeping equipment in a corner, sweeping, throwing out any garbage we had accumulated and on some occasion mopping the floor with the D.L. mop.

7:00 p.m. - 9:00 p.m.

CAUCUS

We agreed not to provoke arrests. This meeting took place in the library. We talked about the possibility of a hunger strike. Miss Oursler, who was against the hunger strike, told Mrs. Mage she ought to try it out herself since she was in favor of the hunger strike. We decided to treat the D.L. employees as guests in our own home. Please see O. Nash poem " Professional Behavior" attached,which was hung on the wall of the waiting room.

9:00 p.m.

M. Miller designed a bulletin board for the sit in's as we had received our first telegram from State Senator William Thompson. Pasted on the walls of the D.L. was the bulletin board and the O. Nash poem.

12:00

Went to sleep.

12:00 - 2:30 a.m.

Mrs. Kahan, Mr. R. Wolfson, Mr. B. Gordon, Mr. N. Brunner sat up and talk to Mr. P. Goodman about the Lindsay administration and Tri-Partitie.

THURSDAY OCTOBER 13, 1966

8:30 a.m.

Rose and cleaned, washed floor.

9:00 a.m.

The following persons jointed the protest:

John Kailin, John Talbut, Jim Cleary, Dave Whitbeck, Manny Rosenkave, Marvin Moschel, Edward Perlmutter, Shain MacClean, Mr. Colon, Miss Fragnoso, Olga Gomez, Dave Jackness, Kathy Fantazzi, Robert Croghan, Larry Berkowitz, James Doran, Joseph Sperling, Lester Berman.

9:15 a.m.

Mr. Tony Scott tried to lock the door to the library. However, he was unsuccessful as Bill Schleicher had stuffed paper in the lock the night before. Mr. S. had come into the library from the rear entrance and tried to lock the door adjoining the waiting room. Mr. S. could not lock the door. Barry Gordon and Stephanie Oursler rushed to the door of the library. Barry Gordon got into the libfary first, by pushing past Mr. Scott. Stephanie pushed pass the policeman and rushed into the Library. Four or Five others tried unsuccessfully to get into the library. Mr. S. said to Stephanie and Barry: "Are you going to get out now" They did not answer him. The policeman stationed himself in front of the library door (the door leading to the waiting room). Sandy Boyer and Bill Schleicher then went through the swinging doors and tried to enter the library thru the rear. The policeman went thru the library and blocked and closed the rear door of the library. Bill and Sandy then ran around to try to enter the front door (adjoining the waiting room) of the library. Bill and San Schleicher successfully entered the library. Sandy was unsuccessful. Barry and Stephanie were playing cards in the library during this period. Bill shortly came out of the library to play with the others. The policeman went to the swinging doors in order to keep his eye on both doors of the library. Sandy B. entered library. Policeman came in and said/"You people are asking for trouble" "I can get aggravated too." The policeman then departed. Barry and Stephanie continued to play cards. The policeman returned behind the railing.

APPROX. 10:00 a.m.

Shortly after 10:00 a.m. Shemin called in Judy Mage ~~in~~. the sit-ins were Singing ~~was going on~~ ~~at the time~~. Mr. S. said to Judy "You are welcome to stay here, if you stay quietly but you are preventing my people from working. Do you plan to sing all day." Judy said: "No, not all day." Shemin said he'd have to have us removed if the noise (singing) was kept up. Judy Mage told the people to "cool it" The reason for this it should be noted is because our lawyer, Ernie Fleischman, was coming at 11:00 a.m. to talk to Shemin and we did not want to be evicted before Ernie arrived. We, therefore quieted down. The singing stopped. At no time that day did Shemin call in Judy Mage to make a complaint.

11:30 a.m.

Ernie Fleischman, esq. arrived. At first we thought that Ernie should hold a meeting with Shemin publicily (in front of all of us); however, Ernie suggested that in order for Shemin to speak frankly it would be better if the meeting was held in private. Mrs. Mage, Mr. Fleishman went in to speak to Mr. Shemin and Mr. Ruffo. They met for about an hour.

THE MEETING:

Judy Mage broached the subject of arbitration and spoke against taking the case to court. Judy dropped the idea of arbitration, but Shemin asked if the SSEU would be interested in arbitration. Judy presented a 5 page letter drawn up by the lawyers to Comm. Shemin. Shemin stated that if the SSEU took the case to court and the City lost the case, the City would not appeal in the higher courts. Ernie requested that Shemin reconsider and asked him to hold a formal meeting with Local 371 to reconsider ~~the problem~~. Shemin asked how could he be expected to think about it with all the people out there. Shemin asked Ernie to try to persuade Judy M. to leave the premise with all the others. Judy M. asked Comm. S. that if he was saying he would have a hearing if everyone left.

4:00 p.m.

Judy M. presented the above to all in a meeting of the persons sitting in.

We attempted to evaluate if the ideas stated by Shemin was a basis for leaving the grounds. Judy Mage did not feel that Shemin was really reconsidering so we decided to continue the sit in.

12:30 p.m.

NBC came and photographed the sit ins while we were singing, at their request, and eating. They remained about an hour. Allan Friedman and Mark Kirszner played their guitars. Sandra Katz led the songs which were sang by about 40 people. Judy Mage was on the telephone contacting politicans and others by telephone. NBC went in to interview Shemin.

3:45 p.m.

State Senator Thompson visited the demonstraters. We sang our songs for him. Thompson was interviewed by the AP in the waiting room of the D.L. Thompson stayed for about a half and hour. He stated that he would return the next day with a delegation of State Senators and Assembly men who supported our position. Mr. Thompson posed with Judy Mage for pictures, which were taken by Jack Reubens. Senator Thompson did not talk with Comm. Shemin.

4:30 p.m.

Some people were sitting in the library and ~~go up~~ went to see Sen. Thompson. The library was more or less empty. Kailin and another person were standing at the door of the library. Suddenly Mr. Scott and Peter Goodman came dashing into the library from the front door. They pushed ~~and charged~~ Kailin back into the library/ They pushed Jim Doran into the waiting room. Stephanie screaming. Barry shoved Peter and Scott back. Several people crowded in behind Barry screaming "Save John Kailing". Second battle of the library ends. The reason for these fights it must be understood is that we feared being cut off from our food and we needed a second room.

5:00 p.m. - 5:300 p.m.

~~Many~~ The persons who had joined us in the morning left. We cleaned up.

5:30 p.m.

Meeting: We considered ourselfes the Executive Board in exile. We again discussed arrests. We felt we could achieve more by waiting. We decided at that time to wait until at least Monday, Oct. 17, 1966. We again turned down the idea of ~~the~~ a hunger strike.

6:00 p.m.

Ate.

10:30 p.m.

Gloria Mason entered the building and brought us a T.V. We watched Ch. 4 in hope that we would be on as we had been on the 6 o'clock news. We were not on T.V. We placed the T.V. on the file cabinete in the management's territory (behind the swinging doors). No comment was made at this by the personnel from the D. of L. The Man on duty that night told us that he ~~who~~ was a forme TWU official. He said he would sing with us "Roll the Union on."However, when we attempted to go on management's side he advised us he would anly sing with us if we stayed on our own side. He stated that we could not use the telephones, however, we advised him that other personnel from the D.L. had permitted us the use of the telephones.

7:45 p.m.

Barry Gordon left the building. As Barry was leaving the janitor let in Ezra Birnbaum, Marty Eisenberg, Marjorie Blake and another welfare client. Judy Mage, ~~and~~ Stephanie Oursler, Ray Wolfson and John Kailin ~~were having a~~ meeting with this delegation from M.F.Y. (Mobilization for Youth) in the building.

10:30 p.m.

The above delegation left.

10:50 p.m.

Barry Gordon returned. He had put garbage in a bag and told the janitor that he was making a delivery. The janitor let Barry in.

12:00p.m.

Sleep.

FRIDAY OCTOBER 14, 1966

8:30 a.m. Scott requested that the "Executive Bed Room" be evacuated. This request was made each morning. It should be noted that this room was at the opposite end of the hall. It was Scott who refered to it as the "Exec. Bed Rm."

9;30 -10;00 a.m.

Judy Mage spoke with Anothony Russo in his office. They discussed the Department of Welfare problems. At 10:00 a.m. they were interrupted by Mr. Tivoli, from the Department of Welfare, who reminded Judy that she had an appointment at 11:00 a.m. re: homemaker election (at the Department of Lab. 6th floor)

11:00 a.m.

Judy Mage and Gloria Mason went to the 6th floor to discuss the Homemaker election. Present also was Al Vianni, Pres. 371, Dan Nelson, Monti Wash, Organizer 371. They discussed the techniques of the Homemaker election. Casutic remarks were made at this meeting re: 11/4/66 date for the Homemaker election in view of the Contract Bar Policy.

8:30 a.m.

Every one rose and cleaned up in anticipation of the demonstration in our support at 12:00.

10-11 AM Jan Schleicher (probably others) freely left and reentered building

12:15 p.m.

500 to 600 Welfare workers demonstrated in front of the Department of Labor. Ellie Kass, Judy Kahan and Maddy Miller went down stairs to participate in the demonstration.

Judy Mage watched the demonstration from the 6th floor where she was discussing the HM election. She then watched it from the 5th floor. We had called a press conference at the Department of Labor for 12:~~15~~ 30 p.m.

The TV men and press came upstairs to the sit-in. At that time we had no~~t~~ intention of bringing the demonstrators up stairs.

People yelled for Judy Mage to come to the window~~s~~ to see the demonstrators.

Stephanie Oursler, Bill Schleicher, Ellie Kass, Nils Brunner went to the window~~s~~ to see the demonstrators. (Please not that Ellie Kass, Judy K., & M. Miller had come upstairs. The sit-ins had advised that they come up). Shamin asked ~~them to~~ that the persons standing at the window leave. They refused. Peter put his arms up, where the Secretaries sit, in order to block persons from going to the window. Mark K. and Judy K. dashed through Peter's arms and got to the window. Peter gave up momentarily. Judy K. and others returned to ~~other~~ area away from window. The crowd was still yelling for Judy M. Peter then put his arms up again to block others from passing through. Judy K. tickled Peter so that he would put his arms down and she could pass. Peter started yelling "officer, officer arrest that woman for assault." Judy K. dashed into the library. Judy Mage could not get to the window. Judy sayed to Peter " Peter its your own choice." Boyer said "Will you let Judy M. through, it will be your responsibility." JM to Peter "Now, Peter, please be reasonable." Stephanie to Peter "Alright Peter: "COME UP, COME UP." (to the demonstrators) Please note that Stephanie had gotten to the window ~~at the beginning~~ prior to Peter's blocking and remained there. Peter then let Judy Mage through. The people were on their way up. Judy Mage said "stop the people" from comming up, put it was too late.

Approximately 300 workers came up in elevators. They immediately crowded into the hallways. The Cops tried to stop them from coming into the waiting room. Judy Mage stood on a chair and called for quiet. They interviewed her on T.V. ~~she~~ Judy made a speech which later appeared on Channel 4 (6:00 pm). Judy thanked everyone for coming. She analyzed the election. She encouraged everyone to go back to their centers and tell them what~~s~~ was happening, and stated that we needed more people for Monday. Throughout this incddent the crowd was orderly Two or Three cheers for an election and the demonstrators left in an orderly and peaceful fashion. About 10 remained.

1:30 p.m.-2:30 p.m.

Leslie Bercowitz and Judy Kahan went shopping with Klyde Singelton to Bohak's for food. They returned with 9 cartons of food ($80.00). However, this time the policeman insisted that we go through the delivery entrance.

Some of the CWA organizers helped Judy to get the food up stairs.

2:30 p.m. ATE

Cohen brought in an electric coffee urn.

2:00 p.m.

Stephanie and Sandy Boyer went out and ate and bought books. Sperling came and ate and then came up at 4:30 p.m.

4:00 p.m.

Gerald Landry, Manny Rosenkave, John Kailin, and Judy Kahan left the building to have ice-cream in a near by coffee shop. There they met Stephanie and Sandy Boyer. They returned within about 15 minutes.

4:30 p.m.

Clean up. Judy K., Sandy Boyer, Stephanie O. went shopping to Modell's for sweat shirts and slacks. They returned prior to 5:00 p.m.

5:00-6:00 p.m.

Prepared and ate food.

6:30 p.m.

Cleaned up~~s~~ and mopped.

The Department of Labor guard, Bob Harris, moved his desk in front of the swinging doors in order tp prevent us from coming on to managment's side. The policeman sat next to Harris. The telephone rang, on managments side, for Judy Mage. Judy M. and Stephanie went over to managments side. Stephanie said she "needed water." Stephanie went to the room that had the water cooler. She unlocked the door. She came back and informed the sit-ins that the door was unlocked. Harris went to the water cooler and filled bottles with Stephanie and let Stephanie out the door. However, the cleaning woman noticed that the door was unlocked and the door was again locked.

Bill Schleicher went to the front and played with the glass window where the receptionist usually sits. Joe Sperling stood by the waiting room door to block Bob's view of the glass window. He (Harris) saw around Sperling and finally the door was closed and Bill rattled the window which Bob cou hear. He (Harris) left his desk and went around the inside corridor to investigate. Bill ran into the waiting room and opened the wooden gate and pushed the barracaded desk out of the Way. Sperling, Sandy Boyer, and Ray Wolfson followed. Bob H. rushed back down the corridor and Jee Sperling came around the area leading to the corridor. Sperling was moving to his far right attempting to avoid ~~him~~ and get past Bob. Bob delibertly swerved towards Sperling and knocked against the wall with his shoulder. Both then squared off as if to fight. Ray Wolfson and Sandy prevented any actual blows.

7:30 p.m.

Judy Kahan and Marv Moschel left the premise.

Sunday Night

A congeregation of ~~boxx~~ about ~~x~~ 9 people, (Dennis Cribben, Dennis Jameson Lucy Flynn, Carol Turner and friend, Ted Chaansinski, Kathy Fritz, Bill Dudan , Jay Bitkower, San Mzen and Bernie Cacchiione met across from 250 Church Street with the intemt to enter 93 Woth Street fire entrancd . At 9 o'c lock shapp the group single filed around the corner to Wroth STreet hurrying and keeping close to the building wall. (We were on the lookout for police cars-not known to City) We reached the fire escape and found the fire gate was padklocked securley, however, 2 peoplem Bill Dudan and Jay Bitkower, climbed over the gate and waited inside the alley way while Barry Gorden came down fire escape and let Dudan and Bittkower into the building. The three went up the fire escape and ~~bex~~ joined people already congregated on the 5th floor.

While Dudan and Bitkower were climbing over the fire escape, the rest of the group went up to the main entrance, saw it was locked and as the custodian approached the door, the group dispersed to both sides of the wall huddling against the bu lding. bernie C. held up a shopping bag, stating he was making a food delivery. (There actually a cake inside the bag.) As the door opened, Bernie pushed the door open all the way and the group rushed in after hijm Bill Schleicher met the gr oup downstairs.

At one point during the entracne of the goup, Barry Gorden monentarily forcibly restrained the custodian from blocking the entrance to the building thus allowing the group to enter. (It is not known wheter the custodian recognized Bayry) After the goup had ~~xjoinedx~~ gained complete entrance, Bill S. led the group up the stair way to the 5th floor. (The elevator was not in operation) When the group reached the 5th floor they were greeted by Stephanie Ourselor and other ~~worker~~ members of the sit-in. The group deposited their coats in the sleeping room opposite from Shemin's office and went into waiting room. Shortly thereafter, the 3 ~~pep~~ people who were climbing the fire escape joined the goup in the waiting room About a half hour of ~~socializingx~~ general socializing took place. About 10PM a general meeting took place int the ~~p~~ library with the door shut (one of our people stood ~~guar~~ guard.

Mrs. Mage briefed the b grop about standards of concu t for those in the sit-in. We toalked abut keeping every inch of space in ou r possession and fighting all effort to regain territory by Shemin and his lieutenants. Mage gave briefing about living accomodations. A suggestion was made to the effect that if food deliveries were cut-off, we would go on a hunger strike. Mage stated we must conduct ourselves in a dignified manner.

About 12PM, Peter Goodman arrived at the office and mingled and watched the group. jAll went to bed about 1AM except for those in the waiting room watiching television in library. Peter Goodman engaged Ida Falk in a conversation about negotiations with Shemin. He proposed to inform Shemin by telepjone in the early hours of the morning of Union's position regarding a serious solution to the impasse. As a result of his proposal a general meeting was called and held in Shemin;s office where Judy and Peter discussed various avenues of approach to the rpoblem. Half way thru the meeting, around 2:30 AM the Union caucused in Shemin's officd to discuss Peter's proposal. A dicussion ~~ensued~~ to evaluate the proposal the result being ~~to reject~~ tentatively accept the suggestion for arbitration,

MONDAY MORNING

People got up around 8AM and began to propare breakfast. New arrivals included Sandra Katz There was no difficulty in obtaning entrance to the building even though Miss Katz was carry a shopping bag full of clothes.

The office staff darrived around 9AM, they were quite friednly to the group. People assembled in the waiting room and breakfast was cooked and eaten in the wating room and the library. After breakfast, the group swept and cleaned the wating andlibrary rooms. A delegation washed pots and pans in the wash rooms and waste was deposited in cartons in the hall. The air mattresses were assembled and placed our of the way of the passageway in the waiting roo m The other rooms used for sleeping were also cleaned up.

Around 10AM we noticed an unusually large number of policemen and 2 policewomen on the 5th floor. At this point, the members of the sit-in gathered in the waiting room and began to sing. About ~~15~~ 5-10 minutes passedbefore Comm Shemin demanded to see Mrs. Mage. Mrs. Mage appeared. Mr. Shemin told Mrs. Mage ~~we~~ his people could not work because the singing was too distracting. Mr. M. replied that the reason we gegan to sing very loudly was due to the presence of so many policemen and policewomen. Shemin then asked if we would stop singing if the police were removed. We agreed. At this point the police left the immediate premises. or area. Unitl one PM, the group amused themselves by reading, sleeping, and playing board games in the waiting room and in the library. During the morning Bart Cohen, his wife and their two children came to visit the group. Other people also came to visit. Two union leaders from the CWA and newsmen arrived and talked with members of the sit-in. Telegrams from political figures and a copy of the NY Post arrived. About 1PM we all had lunch, cleaning was as per usual. A few left the building permanently and some left to do shopping Newsmen and camermen and a reporter from UPI arrived. When the UPI reporter arived, we straightened out the room again, re-sweeping the entire area and clearing all but the outer edges. People made a concerted effort to improve their overall personal appearance. We also expected a group of State Senators to arive in the early afternoon, but they never showed up. Tje reporter from UPI arrived about 3:30 and stayed until 4:00 After him, came approx. 6 movie cameramen and photographers who took various pictures. During the afternoon we also were visited by various SSEU members, some of whom stayed.

4:30 PM Jan Schleicher left to go to a class and told the custodian that she had to goet back in about 7:45PM The custodian volunteered to tell the man on the next shift that he should let "Jan" in. He did so and she had no problem entering.

5:00 All of the camermen and newsmen had left by this time. We prepared a shripm and rice dinner with Chinese food we had ordered outl Dinner was finished about 7:00. During dinner we watdhed the news on TV and talked. No one but us were in the office.

7-9PM People were amusing themselves by reading, making phone calls on Dept. of Lbor phones to recruit reinforcements. We had had a meeting after dinner in which we discussed shcedule for our week.-strategy, possibility of arrest, necessity of recruitment. We also speculated on why Senators had not appeared.

8:55 Larry Bercowitz came up form the ground folllr andnotified us that about 20 policemand had assembled in the lobby. We gathered in the watiing room, picked up what coats and personal belongings were easily accessible We began discussing how to transport our food and other equipment; we also began making ou final decisions as to who would be arrested.

9:00 The police officers arrived with Con . Shemin. Also present were two policewomen. We began singing and awaited announcemnt of impneding arrest.

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Mr. Shemin notified us we had 3 minutes to leave the premises. At the end of this time, he would ask the officers to arrest us. Mrs. Mage asked on what charges and he itemized them, which she noted in writing.

9-9:03 Meeting in library. Those who had to leave stated they were doing so The rest reassembled in the waiting room and the officers prepared to arrest them. The officer in cha ge gave us one last authorization to leve without arrest around 9:15. The members leaving did so; the offcier then plac4 the others uncer arrest, grouping us according to sex.

9:45 The men left first under male guard;the women followed with two policewomen. We went down the elevator and out the fron door where a contigent of SSEU members cheered us as we entered 2 paddy wagons. We were singing constatnly on the way to the station house.

9"30 We arrived at Station House 4th Precint (We think) We got out of the wagong and went through the routine of booking and search. All medicines were given to officers.

10;30 We left the station house for night court lock-up. A Times photographer took pictures without our knowing he was a newsman.

10:40 We were put in cells at NC lock-up. All 11 girls were in one cell without enough space for all to sit on benches. All men, 11, were in anouther larger cell along with 5 other arrestees.

12:00 We were taken upstairs to night court. The judge aksed each of us his name and address and all were given. We were requested to affirm that we would not enter the office of the Dept. of Labor at 93 Worth Street except of legal and private business or at Comm's request. This affirmation was a condition of our being released without bail; Mr. Katz, our lawyer argued for securing such release; his main argument was that we , as City employees were reliable and would comply with the provision. A date of arraignment, Nov 18, was set and we were released.

12:30 We left the courtroom and met many oher SSEU members in the lobby Many of the group went to the SSEU office to make phone calls to all Exec Board members arranging a protest demonstration at 93 Wroth Street for the follwoing morning at 8:30AM

Item left out SUNDAY EVENING Barry Gorden and Bill Schleicher entered Russo's office, examined and stole papers. Therse were later replaced. We believe the city does not know of this.

Friday night, 7PM

There was one person from the city, Bob Harris and one policeman pre present Friday night. After Joseph Sperlin gna Bob Harris were prevented from goming to blows, Bill S. unlocied the door down the corriders so that we could sleep in the hallways adjoingong the corridor. Various sit-inners (X Se. Oarsleer, Ellie Kass, B. Gordon B and J. Schleicher) sat in he doorways to keep them unlocked. Bob Harris tried to get us to leave the xxxx corridors voluntarily but we ruefused to do so! App. ten o'clock PM Mr. Harris called Comm. Shemin to ask if we could sleep in th4e hallways which we had occupied. Comm. stated that we could so, but that we had to leave on Sat. These events occured to app. 11 o'click PM

Sat.

We arose at 9 AM. Betsey Wallace left the building at 10AM and stated that she wo ld return. She returned at 3PM and the custodian was p pleasant to her. He let Betsey in. Other, such as Jan Scleicher had yeh same experience having no trouble with the exits from or access to the building. We continued to matinatin the corridors, especially the executive lounge room, at the opposite end of the corridor of the main corridor where the waitin occured. Stephabine O was sick and occupied this section practically the entire day. We stored food on the ledges in the men's and women's room and in the spqces inside the water coolers. On Sat., Rae Wolfson and other, (Mage, Kass, J. Scleicher etc. discovered xxx access to the roof and they spent time on the roof tanning the sun and getting fresh air.) Most of us f who were there on Sat (12 to 14 people spent time on the rrof at one time or another) We told Peter Goodman, txxx who was now the representative of the City, in response to his question as to where some of us were, i.e. Judy Mage, that we did not know. So far as we know, the City was not aware that anybody was on the roof at any time. The custodians may or may have not know that we were on the roof. Bar Cohen, his wife and two children were allowed access to the building xx on Sat. afternoon and also spent some time on the roof. At 6 PM Larry Bercowitz and Gene Gorden were allowed to come into the building , obtained orders from txxx those prestn for Chinese food, went out and reentered with the food, all without being questioned. We always had access to all xxxxx floors of the bilding, including the basement. We always cleaned up after ourselves. Sat. was a very late night ending at appox. two PM.

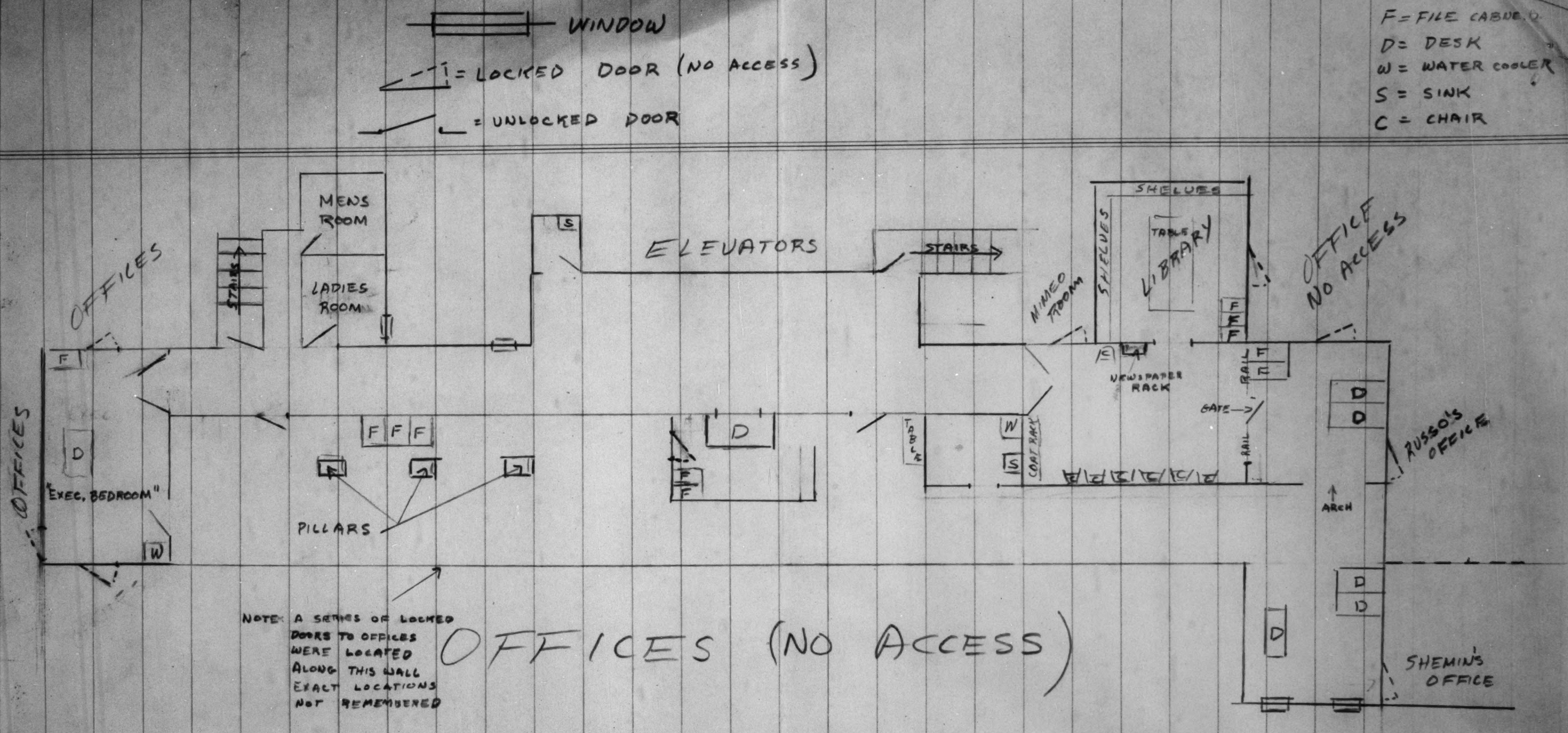
~~[illegible] Sat. evening Bill Schleicher and Barry Gorden entered Russo's office, examined & stole papers. City doesn't know this.~~

Sunday.

We arose late, between 1o and 11 AM, some of us 11 to 12 o clock. During the day, not much happened. We continued to cooupy the roof at various times. It was a sunny day. Late Sunday afternoon, Maddy Miller brought a rotisserie other equipment and food, i.e. bagels. At approx. 6 PM, Judy Kahan and her husband brought 17 quart pot of beef stew. The guard stated to Mrs. Kahan that he could hot tell anymore who was coming in and indicated that access would probably tightened.

Judy Kahan made us clean up the premsises, commenting, " How can you live like this. " Rae Wolfson said in respones, " What can I do, What can I do, Mommy?" Mark Kirzner gave Mr. Kahan a tour of the Floor ~~building~~. That eveining as had been done in the past, we played Risk, cards, read, and watched telegison, sang and wrote songs, played Go and Scrabble.

Plans were being made to admit fresh new sit-iners on Sunday evening at approx. 9 PM.


WINDOW
= LOCKED DOOR (NO ACCESS)
= UNLOCKED DOOR
F = FILE CABINET
D = DESK
W = WATER COOLER
S = SINK
C = CHAIR
OFFICES
STAIRS
MENS ROOM
LADIES ROOM
S
ELEVATORS
STAIRS
MIMEO ROOM
SHELVES
SHELVES
TABLE
LIBRARY
OFFICE NO ACCESS
F
F
F
E
NEWSPAPER RACK
RAIL
GATE →
RAIL
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D
D
RUSSO'S OFFICE
TABLE
W
S
COAT RACK
C C C C C C
↑ ARCH
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F
F F F
PILLARS
D
"EXEC. BEDROOM"
W
OFFICES
NOTE: A SERIES OF LOCKED DOORS TO OFFICES WERE LOCATED ALONG THIS WALL EXACT LOCATIONS NOT REMEMBERED
OFFICES (NO ACCESS)
SHEMIN'S OFFICE

SOCIAL SERVICE EMPLOYEES UNION
DEPARTMENT OF WELFARE
932 BROADWAY - NEW YORK, N.Y. 10010
OR7-3900

President
JUDITH MAGE
First Vice-President
BERNARD CACCHIONE
Second Vice-President
BARTON COHEN
Third Vice-President
GLORIA MASON
Corresponding Secretary
JUDITH KAHAN
Treasurer
EDWARD PERLMUTTER

April 13, 1967

Carl Rachlin
General Council
Scholarship, Education and Defense Fund
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

Please find enclosed check for $500.00 for legal services rendered in the case of Lucy Flynn and 21 others vs. the people of the State of New York.

Sincerely,

Edward Perlmutter

Edward Perlmutter
Treasurer

EP:mf
encl.

RECEIVED
APR 14 196
SEDF

Dear Mr Perlmutter
Thank you for ~~your~~ the check to S.E.D.F. for $500.00 for legal services. We are happy to

NYPFA NO.23

represent those ~~[illegible]~~ officers and
members of SSEU who were
~~at~~ arrested. If we can ever
be of ~~legal~~ help in the
future please let us know

Sincerely

April 20, 1967

Mr. [illegible] Perlmutter, Treasurer
Social Services Employees Union
Department of Welfare
[illegible] Broadway
New York, New York 10010

Dear Mr. Perlmutter:

Thank you for the check of S.S.E.U. for five hundred ($500.) dollars for legal services. We are happy to represent officers and members of SSEU. If we can be of help in the future please let us know.

Sincerely,

Carl Rachlin
General Counsel

[illegible]

the purpose of preserving the same, and return in lieu thereof a photostatic copy with an affidavit setting forth the infirmity in the original, and the name and address of the person in whose custody such original remains; provided, however, that such act of retention shall not in any way vary the effect or alter the property or civil rights of any person in, to or by reason of such instrument or document or anything done with or pursuant to the same; and provided further, that such instrument shall be delivered within fourteen days to the district attorney within whose jurisdiction the same is retained and upon such surrender a receipt therefor shall be given to the custodian thereof; and provided further, that such instrument shall be produced for use in any court or by any public officer when required to do so under proper notice, demand or subpoena. The right to require the production of such document is hereby extended to all officers or courts whether within the state of New York or elsewhere.

EDITORIAL NOTES

DERIVATION—*Added L.* 1936 *ch.* 310, *in effect April* 6.

Article 148.

NUISANCES.

Section 1530. Public nuisance defined.
1531. Unequal damage.
1532. Maintaining nuisance.
1533. Permitting use of building for nuisance; opium smoking.
1534. Ticket speculators.

§ 1530. Public nuisance defined.

A "public nuisance" is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or,

4. In any way renders a considerable number of persons insecure in life, or the use of property.

EDITORIAL NOTES

DERIVATION—*Penal Code* § 385 *subd.* 3, *as am. L.* 1901 *ch.* 367.

-PENAL CODE § 385 *revised from* 2 *RS* (*Edm*) 343 §§ 1, 2; *Code Civ. Proc.* §§ 1660, 1662.

CROSS-REFERENCES—*Gambling apparatus declared a nuisance*, § 972; *Lottery unlawful and a public nuisance*, § 1371; *see Joyce on Nuisances.*

-SYNOPSIS OF ANNOTATIONS-

GENERAL
ELEMENTS OF OFFENSE
  General
  Intent
  Legality
  -Billiard room
  -Cleaning and dyeing
  -Highway obstruction
  -Illegality
  -Intoxicating liquors
  -Medicine; practicing illegally
  -Milk; pasteurizing
  -Motion picture theater; Sunday
  -Sidewalk; bicycle riding
  -Street railroad
  Persons liable
  Scienter
  Subd. 1; annoys
  -Endangering
  -Persons annoyed
  Subd. 2; offends public decency
  Subd. 3; unlawfully obstructs highway
  Subd. 4; factory; locking door
JURISDICTION
INDICTMENT
EVIDENCE

GENERAL

Abatement—On the conviction of the defendant, as an individual, who was the treasurer and manager of a laundry corporation, for maintaining a public nuisance, the court did not have the power to order the defendant to abate the nuisance, and that in default of his abating the nuisance, it should be abated by the sheriff, without proceedings taken against the corporation. PvCooper (1922), 200 AD 413, 193 NYS 16.

-Private individuals may not sue to abate public nuisance, without alleging special damages and irreparable injury. Gibbons v. Hoffman, 115 NYS2d 632.

Individual, whose personal or property rights have been injured may maintain action to abate public nuisance, though a public offense. Armstrong v. Gibson, 202 Misc 399, 117 NYS2d 185.

Automobile racing, along unprotected highway, constitutes nuisance as to those persons particularly affected or injured thereby, for which they have right of action. Saari v. State, 119 NYS2d 507, 203 Misc 859.

Applicability—Discontinuance of use of creek for discharge of untreated sewage. Mtr. City of Johnstown v. Water Cont. Bd. (1961) 12 AD2d 218.

Civil statute—A public nuisance may be declared by a civil statute and a separate penalty provided. PvSterling (1927), 128 Misc 650, 220 NYS 315, aff'd 222 AD 849, 226 NYS 881.

Highway Law—The punishments in the Highway Law, for motor vehicle violations, are exclusive, and defendant may not be prosecuted under this section. PvStrohm (1928), 224 AD 309, 230 NYS 183. Nor can convictions thereunder be docketed by justices of the peace as convictions under this section. Opinion of Attorney-General, 1926, p. 92.

Transportation Corporations Law—Operation of bus line in violation of Transportation Corporations Law, § 26, constitutes a public nuisance. P. ex rel. Judge v. Hylan (1922), 200 AD 430, 192 NYS 741.

ELEMENTS OF OFFENSE

General—To sustain a judgment of conviction under this section it must be estbalished beyond a reasonable doubt "1st, that an act has been unlawfully done or the performance of a duly omitted which is criminal in its nature; 2nd, that the defendant committed such act or omitted to perform such duty, and, 3rd, that such act or omission was with criminal intent on the part of said defendant." "The statute only condemns that which is presently dangerous, and not that which may tend, in connection with some other thing which may or may not subsequently occur, to make it dangerous in the future." PvEckerson (1909), 133 AD 220, 117 NYS 418. See 1515 (712) [10]

Intent—Criminal intent, as applied to the crime of maintaining a public nuisance, does not mean that one charged with the offense should be shown to have consciously and positively intended to interfere with the comfort and repose of any considerable number of persons. His criminality is independent of any positive purpose of annoyance and may arise from his very failure to think of anybody but himself. PvBorden's Condensed Milk Co. (1915), 165 AD 711, 151 NYS 547, aff'd 216 NY 658; PvHigh Ground Dairy Co. (1915), 166 AD 81, 151 NYS 710. It seems it is unnecessary to prove intent to convict one for a violation of the N. Y. City Sanitary Code. PvFriedman (1910), 138 AD 29, 122 NYS 500, aff'd 200 NY 591.

Legality—That which is authorized by competent legal authority cannot in law constitute a nuisance. Joyce Law of Nuisances, §§ 24, 67–80; Davis v. Mayor, etc., 14 NY 506; PvGas Co., 6 Lans 467, 64 Barb 55; Phoenix v. Comrs., 12 HowPr 1; Harris v. Thompson, 9 Barb 350; Plant v. Long Island R. Co., 10 id 26; Crooke v. Railroad Co., 8 WeekDig 252; Caro v. Railroad Co. 46 NYSuper 138, 19 AmL Reg(NS) 376; PvLong Island R. Co., 9 Abb NC 181; PvTelephone Co., 11 id 304; PvKelly, 76 NY 475.

-Billiard room—Keeping a billiard-room, unless kept as a tavern is not a nuisance per se. PvSargeant, 8 Cow 139.

-Cleaning and dyeing corporation, using modern machinery and best methods of conducting business not shown to be unlawful, is not liable for maintaining public nuisance. PvDayton C&DCorp. (1937), 251 AD 332, 296 NYS 129.

-Highway obstruction—A party acting under the authority of the commissioner of highways, and thereby obstructing the public highway, does not act unlawfully, and does not come within this section. PvCrounse (1889), 57 Hun 489, 7 NYCr 11, 4 NYS 266.

--Dam; private land—Where defendant is accused of having wilfully and maliciously obstructed the public highway, by causing water to flow thereon, by constructing a dam on private land, evidence that such obstruction was made under the driection and authorization of the commissioner of highways is admissible in defense. PvCrounse (1889), 51 Hun 489, 7 NYCr 11, 4 NYS 266. Cf. Pv Sutherland (1929), 252 NY 86.

Lowering of lake level during winter by owner of dam site to repair dam and remove weed growth did not constitute public nuisance. Findley Lake Property Owners v. Town of Mina (1956) 31 Misc2d 356.

-Illegality—In Bohan v. Port Jervis Gas Light Co. (1890), 122 NY 32, Haight, J., said: "A common or public nuisance is that which affects the people and is a violation of a public right either by direct encroachment upon public property or by doing some act which tends to a common injury or by the omitting of that which the common good requires, and which it is the duty of a person to do. Public nuisances are founded upon wrongs that arise from the unreasonable, unwarrantable or unlawful use of property, or from improper, indecent or unlawful conduct working an obstruction or injury to the public and producing material annoyance, inconvenience and discomfort. Founded upon a wrong it is indictable and punishable as for a misdemeanor."

-Intoxicating liquors—The manitenance of premises for trafficking in intoxicating liquor conducted without sanctions or regulation by the state and in violation of the federal laws, constitutes a public nuisance. The offense is not mitigated by the fact that the general public are not invited or admitted to the premises. PvVandewater (1928), 250 NY 83. See also to the same effect, United States of America v. Sumner (1925), 125 Misc 658, 211 NYS 705 aff'd 216 AD 782, 214 NYS 930; PvWade (1926), 126 Misc 574, 214 NYS 187 rev'd 127 Misc 593, 217 NYS 486. Contra, PvConti (1926), 127 Misc 244, 216 NYS 442.

--Home of defendant—Selling liquor in home of defendant, in violation of National Prohibition Act, within doors unseen by persons outside, and without noise, violence or improper conduct, is not a public nuisance under this section. PvCook (1927), 220 AD 110, 221 NYS 96 aff'd 248 NY 597; PvBorden (1929), 134 Misc 550, 236 NYS 126.

-Medicine; practicing—Practicing medicine in violation of Education Law, art. 48 is not a nuisance per se. PvLaman (1936), — Misc —, 286 NYS 467; cf. PvLaman (1937), 250 AD 660, 295 NYS 728.

-Milk; pasteurizing—A permit from a board of health to pasteurize milk, does not relieve defendant of liability. PvBorden's Condensed Milk Co. (1915), 165 AD 711, 151 NYS 547 aff'd 216 NY 658.

-Moving picture theatre; Sunday—The operation of a moving picture theatre on Sundays may, under certain circumstances, be declared a nuisance. Hamlin v. Bender (1915), 92 Misc 16, 155 NYS 963 aff'd 173 AD 996, 159 NYS 1117.

-Sidewalk; bicycle riding—To ride a bicycle on the sidewalks of a town is not per se a nuisance where rider has a license to do so from the town authorities. Lechner v. Newark (1896), 19 Misc 452, 44 NYS 556.

-Street railroad—Night passage of empty street cars along railroad right of way from terminal to storage barn for distance of mile, held not to constitute public nuisance in absence of proof of negligence. PvBrooklyn &QT Corp. (1940), 283 NY 484, 28 NE2d 925.

Persons liable:

-Husband, while acting as the agent of his wife in regard to her lands, cannot be made liable and punished for continuing a nuisance thereon. PvCrounse (1889), 51 Hun 489, 4 NYS 266, 7 NYCr 11; PvLivingston (1882), 27 Hun 105.

-Superintendent in charge of a milk and cream business for the individual owner thereof, who permits and allows employees in his charge and control to make noises by night and day loading trucks, in cracking and breaking ice, and permits and allows them to use profane and indecent language, and who has authority to discharge and employ help and who has entertained the complaints of residents and undertaken to abate the alleged nuisance, may be convicted of committing a nuisance. PvWeeks (1916), 172 AD 117, 158 NYS 39.

-Treasurer and manager of a corporation which maintains a public nuisance may be convicted. PvCooper (1922), 200 AD 413, 193 NYS 16.

Scienter—The creator of a nuisance is liable without notice but a continuer is not liable without proof of scienter. Pitcher v. Lennon (1896), 16 Misc 609, 38 NYS 1007 aff'd 12 AD 356, 42 NYS 156.

Subd. 1; Annoys:

--Bell; ringing—Electric burglar alarm may constitute a public nuisance. PvHess (1920), 110 Misc 76, 179 NYS 734.

--Bees—Though there was no town ordinance against keeping a colony of bees, it was unlawful to make a public nuisance of them. It is not necessary to allege negligence or criminal intent or that the act is unlawful per se. PvMcOmber (1954) 206 Misc. 465.

--Noise; at night—The number of persons affected need not be very great. Evidence that defendant managed a business from which came sounds of tumult, revelry, drums and brasses at night, disturbing sleep of dwellers in neighborhood, is sufficient to sustain conviction. PvRubenfeld (1930), 254 NY 245. Operation of a laundry held not a public nuisance. PvCooper (1922), 200 AD 413, 193 NYS 16.

Noise made by operation of empty trolley cars over its right of way held not within § 1530, since rights invaded thereby are not suffered by complainants in their status as citizens or part of public, but in their private capacity in respect of interference with comfortable enjoyment of their homes. PvBrooklyn &QT Corp.. (1939), 258 AD 753, 15 NYS2d 295.

Air conditioning unit, projecting from window of defendant's home and not making unreasonably loud noise, did not violate § 1530. PvArkow, 124 NYS2d 704.

Tavern manager found guilty of violation of village ordinance against noisy conduct. Ordinance did not conflict with Penal Law § 722, subd. 5 and prosecution did not involve severe misdemeanor penalties of a public nuisance. PvRapalski (1961) 29 Misc2d 988, 220 NYS2d 363.

--Smoke—"When the smoke is so unusual and excessive as to naturally interfere with the ordinary comfort of human existence, the trier of the facts taking into account all the circumstances, such as public utility, locality, immediate surroundings, and the like, may find the use unreasonable." PvTransit Development Co. (1909), 131 AD 174, 115 NYS 297. An ordinance prohibiting the emission of a dense smoke in a populous city is constitutional since it is a matter of "universal experience that dense smoke emitted in a large, populous city is a nuisance, though it may not have been previously so held at common law or so declared by statute." PvN. Y. Edison Co. (1913), 159 AD 786, 144 NYS 707.

-Endangering:

--Cemetery near wells—Injunction was granted due to probable contamination of roller. As to the principle, see Nitro-Phosphate Co. v. London and St. Katharine Docks Co., 9 L. R. Ch. Div. 503.

Upon a former appeal herein, reported in 118 App. Div. 891, 103 N. Y. Supp. 1122, we affirmed an order of the Trial Term for a new trial, not upon the proposition that the plaintiff's theory was necessarily so counter to a physical and scientific fact as to be incredible as matter of law, but in that it appeared that the trial court granted the order upon the question of the weight of the evidence.

The judgment and orders are affirmed, with costs. All concur.

(131 App. Div. 174)

PEOPLE v. TRANSIT DEVELOPMENT CO.

(Supreme Court, Appellate Division, Second Department. March 5, 1909.)

1. **Nuisance (§ 65*)—Legislative Authority.**

Where legislative authority is pleaded as a defense to an indictment for public nuisance, the act must have been within the contemplation of the Legislature, and either expressly or by necessary implication permitted by it.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 158, 159, 170, 171; Dec. Dig. § 65.*]

2. **Eminent Domain (§ 69*)—Compensation.**

Where the Legislature authorizes a thing to be done which may cause injury to private persons, it cannot be supposed that it is intended to be done without making compensation; and where permission is given to a corporation having the right of eminent domain, it must be supposed that the intention is that it shall acquire the necessary rights by the exercise of that power, if not by contract.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 171-179; Dec. Dig. § 69.*]

3. **Nuisance (§ 65*)—Power Plants—Location—Legislative Authority.**

The Legislature having authorized the construction and operation of electric railroads in the borough of Brooklyn, it thereby authorized the location of power plants where they might cause possible annoyance or discomfort to private persons; and, though this did not permit the taking of private property without compensation, it prevented such plants from being a public nuisance.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 158, 159, 170, 171; Dec. Dig. § 65.*]

4. **Nuisance (§ 59*)—"Public or Common Nuisance."**

A "public or common nuisance" is that which affects the public and constitutes an annoyance to all; a thing which in its nature or its consequences is a nuisance, an injury or a damage to all persons who come within the sphere of its operation, though in greater or less degree. It is public when it affects the rights enjoyed by citizens as a part of the public, as the right of navigating a river, or traveling on a public highway, etc.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 135, 136; Dec. Dig. § 59.*

For other definitions, see Words and Phrases, vol. 6, pp. 5799-5804.]

Def.
Public
Nuisance

5. **Nuisance (§ 1*)—"Private Nuisance."**

A "private nuisance" is something which injures or annoys the lands, tenements, or hereditaments of another.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. § 1; Dec. Dig. § 1.*

For other definitions, see Words and Phrases, vol. 6, pp. 5574-5576.]

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*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes

6. **NUISANCE (§ 72*)—PUBLIC NUISANCE—RIGHT TO SUE.**

A private person cannot prosecute a suit for a public nuisance, un the nuisance affects the comfortable enjoyment of private property an the owner suffers injury different in kind from that suffered by the pu lic, when he may sue, though a considerable number may be injured b the same act.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. § 164; Dec. D § 72.*]

7. **NUISANCE (§ 4*)—PRIVATE NUISANCE—GIST OF ACTION.**

In a suit for an alleged private nuisance caused by the carrying on o a lawful business, the gist of the action is whether the use made by defendant of his premises is reasonable with regard to the time, place, an circumstances; the extent more than the nature of the injury being regarded as constituting the actionable injury.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 26-34; Dec. D § 4.*]

8. **NUISANCE (§ 92*)—PUBLIC NUISANCE—PROSECUTION—EVIDENCE.**

Defendant corporation maintained an electric power plant in the vicinity of a gas and other manufacturing plants, where large quantities of co were burned daily. Defendant was indicted for maintaining a public nuisance, resulting from the fact that small flakes or particles of hard co were emitted from its smokestacks and fell on passers-by and were blow or sifted into the houses within a given radius. *Held*, that defendant was entitled to prove the incorporation of the railroads comprising the Brooklyn rapid transit system, the relations existing between defendant an such system, that the transit company owned all of defendant's stoc that defendant sold power only to such company at cost, and that it was not practicable for the company to get power elsewhere, in order to establish that the public inconveniences resulting from the shutting dow of defendant's plant would so outweigh these inconveniences to the pub as to prevent defendant's conviction.

[Ed. Note.—For other cases, see Nuisance, Dec. Dig. § 92.*]

Appeal from Kings County Court.

The Transit Development Company was convicted of maintaining a public nuisance, in violation of Pen. Code § 385, and it appeals. Reversed.

Argued before WOODWARD, JENKS, GAYNOR, and MILLER, JJ.

Edward W. Hatch (George D. Yeomans and Charles L. Woody, on the brief), for appellant.

Robert H. Elder (John F. Clarke, Dist. Atty., on the brief), for the People.

MILLER, J. The defendant is a domestic corporation, organize under the business corporations law (Laws 1890, p. 1162, c. 567), for the purpose, among others, of carrying "on a business of general contractors, including the contracting with other corporations and perso for the supply of power or for the construction, equipment or improvement of railroads, bridges, wharves, tunnels and subways and to ca out such contracts." It maintains an electric power plant on the riv front at Kent and Division avenues in the borough of Brooklyn. Th people's evidence tends to show that small flakes or particles of ha coal are emitted from its smokestacks, fall upon passers-by, and a blown or sifted into the houses within a given radius. A gas pla across the street and other manufacturing plants in the vicinity burn large quantities of coal daily. The defendant's evidence tends to show that its plant was suitably located, was equipped with the best up to date devices, and was properly run; that, not being permitted to burn soft coal, it burned the only other coal commercially practicable for its use; and that at the time of the trial it was installing at large expense a device which, though new for that use, was expected greatly to reduce, if not entirely to prevent, the emission of cinders from its smokestacks. It offered in evidence the certificates of incorporation of the railroad companies comprising the Brooklyn rapid transit system, and it offered evidence tending to prove the relations existing between them and it, that the Brooklyn Rapid Transit Company owned all of its capital stock, that it sold power only to them, and at cost, and that it was not practicable for them to get the power elsewhere. All of that evidence was excluded.

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*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Inde

The defendant contends that the railroad corporations have legislative permission to maintain at suitable and convenient places the necessary power plants to run their roads, that they may contract with another to do that for them, and that the permission given them devolves on the one with whom they contract. The learned district attorney contends that, as the Legislature has not expressly authorized this particular plant to be run at the place and in the manner disclosed, neither the defendant nor the railroad companies have permission to run it. While there are expressions in some opinions, not necessary to the point actually involved, tending to support the proposition contended for by the district attorney, no case is cited expressly holding that to be the law of this state; but the contrary has been decided. The actual authority for the proposition is the case of Managers, etc., v. Hill, 4 L. R. Q. B. 433; Id., 6 L. R. App. Cas. 193. The reason for the decision in that case was the absence of any provision in the act for compensation to persons whose rights should be invaded, which was regarded, as expressed by Lord Blackburn, as "a reason, though not a conclusive one, for thinking that the intention of the Legislature was, not that the thing should be done at all events, but only that it should be done, if it could be done, without injury to others." But our Legislatures, unlike Parliament, are subject to constitutional limitations, and are powerless to authorize a taking of private property, even for a public purpose, without making compensation. Muhlker v. Harlem R. Co., 197 U. S. 544, 25 Sup. Ct. 522, 49 L. Ed. 872.

The question as to what constitutes a taking and what results only in consequential damages is not material to the present discussion. When our Legislature authorizes a thing to be done which may cause injury to private persons, it cannot be supposed that it was intended to be done without making compensation; and, where permission is given a corporation having the power to take property by the right of eminent domain, it must be supposed that the intention was that it should acquire the necessary rights by the exercise of that power, if not by contract. At any rate, the reason for requiring explicit authority of Parliament for the particular act does not apply in this country. However, it is undoubtedly the law that the act, for the doing of which legislative authority is claimed, must have been within the contemplation of the Legislature, and either expressly or by necessary implication permitted by it. Cogswell v. N. Y., N. H. & H. R. R. Co., 103 N. Y. 10, 8 N. E. 537, 57 Am. Rep. 701; Bohan v. P. J. G. L. Co., 122 N. Y. 18, 25 N. E. 246, 9 L. R. A. 711; Morton v. Mayor, 140 N. Y. 207, 35 N. E. 490, 22 L. R. A. 241; Booth v. R., W. & O. T. R. R. Co., 140 N. Y. 267, 35 N. E. 592, 24 L. R. A. 105, 37 Am. St. Rep. 552; Garvey v. L. I. R. R. Co., 159 N. Y. 323, 54 N. E. 57, 70 Am. St. Rep. 550; D., L. & W. R. R. Co. v. City of Buffalo, 158 N. Y. 266, 53 N. E. 44; Sadlier v. City of New York, 104 App. Div. 82, 93 N. Y. Supp. 579, 185 N. Y. 408, 78 N. E. 272. It should be observed that those were all private suits.

Public, not private, rights are involved in this case. There can be no doubt that the railroad corporations have legislative permission to do what is necessary for the running of their roads in the city (now borough) of Brooklyn, for that has been expressly decided. Brooklyn Heights R. R. Co. v. City of Brooklyn, 152 N. Y. 244, 46 N. E. 509. See, also, Bennett v. L. I. R. R. Co., 181 N. Y. 436, 74 N. E. 418; Friedman v. N. Y. & H. R. R. Co., 89 App. Div. 38, 85 N. Y. Supp. 404. When the Legislature authorized the organization of corporations to construct and operate electric roads in cities, it of course contemplated the construction of such roads as exist in the borough of Brooklyn. In view of the location of this city and of its rapid growth, it must have been within the contemplation of the Legislature that power plants would have to be located where possible annoyance or discomfort to private persons might be caused. That did not authorize the taking of private property without making compensation, but it prevented the thing authorized from being a public nuisance. See People v. N. Y. Gaslight Co., 64 Barb. 55. In Baltimore & Potomac R. R. Co. v. Fifth Baptist Church, 108 U. S. 317, 2 Sup. Ct. 719, 27 L. Ed. 739, the court, per Mr. Justice Field, quoted with approval from Sinnickson v. Johnson, 17 N. J. Law, 151, 34 Am. Dec. 184, the following:

> "It may be lawful for him [the grantee of the power] and his assignees to execute this act, so far as the public interests, the rights of navigation, fishing, etc., are concerned, and he may plead, and successfully plead, the act to any indictment for a nuisance, or against any complaint for an infringement of the public right, but cannot plead it as a justification for a private injury which may result from the execution of the statute."

However, the defendant has been endowed only with the powers which any individual may exercise, and can claim from its certificate of incorporation no greater rights. It is a mere accident that the railroads are its only customers, if that be the fact. A right, specially granted to a quasi public corporation, cannot be devolved by it upon an individual. It must be presumed that the Legislature intended that the right should be exercised by the one to whom it was granted. Permission to own and run the entire system might as well be devolved as permission to own and run any part of it. The railroads could have acquired, under the power of eminent domain, the site for this power plant and the property rights infringed by its maintenance, a cogent reason for thinking that the railroads have legislative permission to maintain it. But the defendant had no such power, and there is as much reason for saying that the power of eminent domain to acquire the site could be devolved as that the permission to maintain the plant upon the site when acquired could be.

The cases of Benner v. A. D. Co., 134 N. Y. 156, 31 N. E. 328, 17 L. R. A. 220, 30 Am. St. Rep. 649; Bates v. Holbrook, 171 N. Y. 460, 64 N. E. 181, and similar cases, are not in point. In those cases, the defendants contracted to do public work, directed by the Legislature to be done. They obtained their permission, not by devolution, but directly from the public authorities authorized to make the contract. Moreover, all of said corporations could not give the defendant the right to generate at one place the power which they might separately have the right to generate at different places. Of course, we are not advised of what the proof might show respecting the right of the Brooklyn Rapid Transit Company to operate the entire system as one road or what the fact respecting such operation may be; but, in any view of the case the defendant cannot shield itself behind legislative permission. However, it does not follow that the said evidence was properly excluded.

It is important at this point to observe the distinction between public and private nuisance. Blackstone defines "public or common nuisances" to be those "which affect the public, and are an annoyance to all the king's subjects," and "private nuisances" to be "anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another." A public nuisance is a thing which "in its nature or its consequences is a nuisance, an injury or a damage to all persons who come within the sphere of its operation, though it may be in greater or less degrees." Soltau v. De Held, 9 Eng. L. & E. 104–111. A nuisance is public "when it affects the rights enjoyed by citizens as part of the public, as the right of navigating a river or traveling on a public highway, rights to which every citizen is entitled." King v. Morris & Essex R. R. Co., 18 N. J. Eq. 397–399.

Definitions
public
nuisance

Upon first examination of sections 385 and 386 of the Penal Code, it may seem that the Legislature intended to change the law. Those sections are taken from sections 430 and 431 of the draft Code, prepared by the Field Commission and submitted to the Legislature in 1865. It is evident from the report of the commission that they intended only to codify and harmonize existing laws. The four subdivisions of section 430 are supported by a note, containing numerous citations, and in the note to section 431 the reason for substituting the words "a considerable number of persons" for the words "the whole community or neighborhood," found in section 1572 of the draft Civil Code, then prepared, was stated to be to avoid uncertainty; and it was said:

Intent
of
§385, 386
Penal Code

> "It may be doubtful in some cases whether the persons affected by an obstruction in a navigable stream, for instance, form what can be called a neighborhood"

—thus showing the intention to retain the idea of a common nuisance, as distinguished from private nuisances, suffered by a determinate number of persons. The first sentence of said section 385 is:

> "A public nuisance is a crime against the order and economy of the state."

The Court of Appeals, per Martin, J., say, in Ackerman v. True, 175 N. Y. 353–360, 67 N. E. 629, 630:

> "It is well established by the decisions of this court that interferences with public and common rights create a public nuisance."

It is elementary that a private person cannot prosecute a suit for a public nuisance; though he may suffer injury, it is common to the public, and can only be redressed by the state, either by indictment or by a suit to abate the nuisance; though, where an individual suffers peculiar or special damage, not common to the public, the nuisance is as to him private, and he may have his action for damages, or, in a proper case, may invoke the equity power of the court. See Doolittle v. Supervisors, 18 N. Y. 155–160; Kavanagh v. Barber, 131 N. Y. 211–213, 30 N. E. 235, 15 L. R. A. 689; Ackerman v. True, supra. For the interference with the comfortable enjoyment of their homes, for the injury to their property, the owners thereof have an appropriate remedy, if there be a nuisance; but as to each of them the nuisance is private, and does not become public merely because a considerable number may be injured; for, otherwise, it would follow that, in case of special injury to each of a considerable number, no private suit could be maintained. Hence, while the evidence of annoyance and discomfort to those dwelling in the vicinity of the alleged nuisance was relevant, the case has to be considered solely from the aspect of the public or common rights invaded.

It is necessary now to consider whether and to what extent the doctrine of compensation applies. The question appears to have been given more consideration by the courts in England than in this country. The Court of Kings Bench, in the case of Rex v. Russel, 6 Barn. & Cress. 566, held, Lord Tenterden, C. J., dissenting, that the question whether the public benefit countervailed the prejudice done to individuals was properly submitted to the jury in the trial of an indictment for maintaining a public nuisance. The alleged nuisance in that case consisted of an obstruction in the river Tyne, caused by staiths erected for the loading of ships with coals, plainly a case of an invasion of public and common rights. The public benefit was the remote and indirect benefit supposed to result from the improved quality and cheaper price of the coals, because they could thus be loaded in better condition and at less expense. That case was disapproved in King v. Ward, 4 Ad. & Ell. 384, also a case of the obstruction of a navigable stream. But the judgment of Lord Denman, C. J., shows that the doctrine of compensation was not rejected, but that only advantages closely connected with the inconveniences resulting, not remote and indirect benefits alone, could be considered. In 1858 the Court of Common Pleas held, in a private suit, that the business of brick burning, being a necessary and useful trade for the building of houses, could not constitute a private nuisance if carried on in a reasonable manner and a proper and convenient place. Hole v. Barlow, 4 C. B. [N. S.] That case was overruled by the Court of Exchequer Chamber in v. Turnley, 31 L. J. (N. S.) Q. B. 286, but upon the ground, by the judgment of Baron Bramwell, that supposed public benefit could not justify the infliction of loss upon an individual without compensation. That case was followed in Cavey v. Lidbetter, 32 L. J. (N. S.) Q. B. 104; but the judgment of Erle, C. J., shows that, while a private nuisance from a lawful trade could not be justified by convenience of place alone, the jury were entitled to consider all of the circumstances in respect of time, place, manner and degree, in determining whether actionable discomfort was made out. He said:

> "It seems to me that life, in a dense neighborhood, cannot be carried on without mutual sacrifices of comfort, and that in all actions for discomfort the law must regard the principle of mutual adjustment; and the notion that the degree of discomfort which might sustain an action under some circumstances must therefore do so under all circumstances is as untenable as the notion that the act complained of, if done in a convenient time and place, must therefore be justified, whatever was the degree of annoyance that was occasioned thereby."

The judgments given in the House of Lords in the case of St. Helens Smelting Co. v. Tipping, 35 L. J. (N. S.) 66, are instructive. That was a suit for a private nuisance, a direct injury to property from smelting works. The Lord Chancellor distinguished the case of material injury to property from that of mere personal discomfort, and in respect of the latter said:

> "If a man lives in a town, of necessity he should subject himself to the consequences of those operations of trade which may be carried on in his immediate locality, which are actually necessary for trade and commerce; also for the enjoyment of property, and for the benefit of the inhabitants of the town and of the public at large."

In this state, in suits for alleged private nuisance, caused by the carrying on of a lawful business, the question is whether the use made by the defendant of his premises is reasonable, regard being had to time, place, and circumstance. Booth v. R., W. & O. T. R. R. Co., 140 N. Y. 267, 276, et seq., 35 N. E. 592, 24 L. R. A. 105, 37 Am. St. Rep. 552; McCarty v. Nat. Carbonic Gas Co., 189 N. Y. 40, 81 N. E. 549, 13 L. R. A. (N. S.) 465. In the last case cited, Judge Vann, after reviewing the authorities, said:

> "The extent more than the nature of the injury, the quantum rather than the damnum, constitutes the nuisance. Some smoke is generally created by the natural and ordinary use of land near a city or village, and while this may sometimes be annoying to neighbors it is part of the price paid for living where there are neighbors. But when the smoke is so unusual and excessive as to materially interfere with the ordinary comfort of human existence, *the trier of the facts, taking into account all the circumstances, such as public utility, locality, immediate surroundings, and the like, may find the use unreasonable.*" (Italics are mine.)

It seems that in a private suit the evidence excluded in this case would be considered by the court in determining whether an injunction should be granted or only money damages allowed. Riedeman v. Mt. Morris El. L. Co., 56 App. Div. 23, 67 N. Y. Supp. 391. And see Grey v. Simmons, 60 N. J. Eq. 385, 45 Atl. 995, 48 L. R. A. 717, 83 Am. St. Rep. 642, and Commonwealth v. Miller, 139 Pa. 77, 21 Atl. 138, 23 Am. St. Rep. 170.

The question of the right to consider the public advantage in determining whether there is a public nuisance has been decided by the

Court of Appeals in a suit instituted by the Attorney General to compel the abatement of an alleged nuisance, the maintaining of a floating elevator in the City Ship Canal of Buffalo. In that case judgment for the plaintiff was reversed by the General Term, and the reversal was sustained by the Court of Appeals. In the course of his opinion, Judge Allen, speaking for the court, said:

"The employment being lawful, the question was directly presented whether the slight obstructions resulting from the means used were not more than balanced by the public benefits and the facilities rendered to the commerce of the canal and of the city, and it was error to refuse to consider them." People v. Horton, 64 N. Y. 610.

My conclusions from the foregoing authorities are that in a private suit the evidence excluded in this case would be relevant to the issue whether the defendant was making a reasonable use of his property; that, even though a technical nuisance were made out, it could be considered by the court in an injunction suit on the question whether the public harm to result from shutting down the plant would not so outweigh the slight benefit to individuals as to justify the withholding of injunctive relief; and that, in a public prosecution, the evidence is admissible to prove that the public inconveniences were absorbed in the greater public advantages directly resulting.

The defendant was indicted for an injury to the public, and was entitled to show the public benefit directly resulting from the act charged. It must not be overlooked that questions of injury to private property, to be redressed at the suit of the owners thereof, are eliminated from the present discussion. We are dealing only with the personal discomforts suffered by all the public who happen to be in the vicinity of this power house, and the defendant was entitled to prove that the inconveniences from particles of hard coal in the air to passers-by in the street, for instance, were more than counterbalanced by the immediate advantage to them and the entire public from the power generated by the defendant to run the electric roads. The excluded evidence may have shown that the Brooklyn Rapid Transit Company could have shielded itself from public prosecution for the maintenance of this power plant by legislative authority. While, in law, the defendant, though owned by that company, has a distinct identity, the jury were entitled to know that it was only doing for the said company what the latter had the right to do. The street railroads of this city are a public necessity. While the defendant may not have legislative permission to run this power plant in the sense in which that term is now used, it does have the right to engage in the lawful business of supplying the street railroads with power, and mere discomfort arising therefrom to individuals, which is only incidental—indeed, it may be said necessary—to the existence of this great city, does not justify a public prosecution. Absolute rights cannot exist in organized society, and the denser the population, the greater the city, the more the rule of give and take, of mutual sacrifice, comes in play. Discomforts have to be borne in return for the advantages and conveniences of city life. Those living in manufacturing districts have to submit to what would not be allowed in strictly residential neighborhoods, and, in the mutual adjustment of things, find compensation in various ways.

The defendant respects the city ordinance and burns hard coal. This, when subjected to the intense heat of its furnaces, flakes off, and particles escape through its smokestacks. These particles may be an annoyance, but they certainly are not more unsanitary than many foreign substances found in the air everywhere in a crowded city. To many the odors from the gas plant across the street from the defendant's plant would be more offensive, and perhaps more harmful, than the particles of coal. There are few reported cases in this state of public prosecutions for nuisance resulting from lawful trade or business, and such cases may well be left to be redressed at the suits of individuals specially injured. The trades usually referred to in the books as indictable at common law were the tallow candlers', the tanners', and the like trades. The defendant is not contaminating the air with noisome and noxious vapors and gases, nor can it just as well conduct its business in some remote place. The place selected by it appears to be as suitable as any that could be selected; at least, a jury would probably think so. It was a question of fact upon the evidence whether the business could be conducted without the emission of cinders from the smokestacks. With the excluded evidence in the case, it might be a question whether the maintenance of this power plant, or one like it in some similar place, was necessary to the running of the railroads. But, if those questions should be resolved in favor of the defendant, it cannot be credited that a jury of this city, properly instructed, would convict the defendant of maintaining a public nuisance, merely because particles of hard coal in place of black smoke were emitted from its smokestacks.

The judgment is reversed. All concur.

(131 App. Div. 110)

PRIME et al. v. CITY OF YONKERS.

(Supreme Court, Appellate Division, Second Department. March 5, 1909.)

1. Appeal and Error (§ 1009*)—Review—Findings of Fact.

Before there can be a reversal on the facts in an equitable action, it must appear that the findings were against the weight of evidence or that the proofs so clearly preponderate in favor of a contrary result that it can be said with reasonable certainty that the trial court erred in its conclusions.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3971, 3974; Dec. Dig. § 1009.*]

2. Municipal Corporations (§ 846*) — Negligence as to Waterway — Evidence.

In an action against a city to abate a nuisance, consisting of an old abutment left in a waterway after dams were removed, which so disposed the flow of the water that it caused injury to plaintiff's land, evidence *held* to support a finding of improper construction.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1799; Dec. Dig. § 846.*]

3. Trial (§ 379*)—Equity Case—Trial by Court—Reception of Evidence.

In equity trials without the aid of a jury, the old chancery rule as to the admission of evidence obtains, and, though improper testimony is ad-tor may protect a beneficiary against his own improvidence by creating a trust for his benefit, the income from which is inalienable. Section 103, Real Property Law; Section 15, Personal Property Law. This income is likewise protected against creditors of the beneficiary who may only reach a portion of it by an appropriate proceeding under section 684 of the Civil Practice Act or by an action in equity to impound surplus income."

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*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes.

[4, 5] A receiver clearly has no greater rights than a judgment creditor. He takes the interest, if any of the judgment debtor, under § 807, Civil Practice Act. In the case at bar the trust for the life beneficiary has not been created. Whatever the future interest of the life beneficiary may be, he may not assign or alienate it for the reason that it is contrary to public policy to permit the assignment of future income of a trust. Matter of Glover's Estate, 246 App.Div. 781, 284 N.Y.S. 487.

[6] It would appear, therefore, that the receiver is not a person interested, so as to permit his appearance in this proceeding, and the filing by him of objections to the intermediate account. In those reported cases where receivers were permitted to come into Surrogate's Court seeking relief, the Courts did so on the theory that the receiver was the assignee of the legatee by operation of law, and therefore stood in the shoes of the legatee. The facts of those cases differ from the circumstances in the matter under consideration.

The contention of the executor is sustained and the objections of the receiver are dismissed.

Settle order on notice, or by consent.

PEOPLE, on Information of PLATE, et al. v. EHRLICH.

Magistrate's Court, Westchester County, Town of New Castle.

Aug. 8, 1939.

1. Nuisance ⚷91(1)

Under the statute defining a public nuisance as an unlawful act or omission to perform a duty endangering the comfort of "a considerable number of persons," an information charging that at least seven persons were annoyed by barking of dogs owned by defendant was sufficient, since statute does not require that a very great number nor any particular number of persons be disturbed. Penal Law, § 1530, subd. 1.

[Ed. Note.—For other definitions of "Considerable Number of Persons," see Words & Phrases.]

2. Nuisance ⚷91(1)

Under the statute defining a public nuisance as act disturbing "a considerable number of persons," an information charging that dogs owned by the defendant annoyed at least seven without a specific allegation that "a considerable number of persons" were annoyed. Penal Law, § 1530, subd. 1.

3. Criminal law 🔑213

If an information seeking to charge the maintaining of a public nuisance is insufficient in failing to allege that a sufficient number of persons were disturbed by the nuisance, it should not be dismissed if evidence taken before magistrate proves the commission of crime of maintaining a public nuisance. Penal Law, § 1530, subd. 1; Code Cr.Proc. § 208.

4. Criminal law 🔑240

At a preliminary hearing before the magistrate, if there is prima facie evidence of any crime, the magistrate must hold defendant. Code Cr.Proc. § 208.

5. Criminal law 🔑230

A preliminary hearing before magistrate is not a "trial." Code Cr.Proc. § 208.

[Ed: Note.—For other definitions of "Trial," see Words & Phrases.]

6. Nuisance 🔑92

The quantum of proof required to establish crime of maintaining public nuisance is greater than that needed to prove a prima facie case of private nuisance. Penal Law, § 1530, subd. 1.

7. Nuisance 🔑89

While individuals may sue to enjoin a private nuisance, no prosecution lies for a public nuisance unless it interferes with rights common to the general public. Penal Law, § 1530, subd. 1.

8. Nuisance 🔑92

In suit to abate a nuisance arising from conduct of a lawful business proof that defendant acted negligently may not be required, but in a criminal prosecution for keeping a public nuisance, evidence of improper or defective methods is essential. Penal Law, § 1530, subd. 1.

9. Nuisance 🔑64

A lawful business, properly conducted, is not a "public nuisance." Penal Law, § 1530, subd. 1.

[Ed. Note.—For other definitions of "Public or Common Nuisance," see Words & Phrases.]

10. Nuisance 🔑64

One who raised dogs, and kept other domestic animals on a 41-acre farm in a district classified as "residence A," was engaged in a lawful occupation, providing such activities did not invade public right.

11. Nuisance 🔑92

To charge a defendant with maintaining a "public nuisance," by maintaining on her premises dogs, donkeys, horses, and goats, there must be evidence of invasion of a public right and proof that annoyance caused by defendant's lawful activities might, with care, have been modified or avoided. Penal Law, § 1530, subd. 1.

12. Criminal law 🔑238

Evidence received in a preliminary hearing of one charged with maintaining a public nuisance that the defendant kept on her farm in a country residential community dogs whose constant barking disturbed neighbors and that diseased cats strayed from defendant's farm to adjoining lands where they destroyed birds was sufficient to require defendant to stand trial. Penal Law, § 1530, subd. 1.

13. Nuisance ⟹67

One engaged in the lawful occupation of maintaining animals on a farm located in a country residential district was under an obligation to use reasonable efforts to prevent the animals from injuring public. Penal Law, § 1530, subd. 1.

◆

Proceeding by the People of the State of New York, on the information of Jenny T. Plate and Christopher J. Weldon, against Stella Ehrlich charging defendant with keeping a public nuisance. Defendant moved to dismiss the information.

Motion denied.

King, Dart & Hood, of White Plains (Dennis L. O'Connor, of New Rochelle, and Herman A. Schupp, Jr., of Port Chester, of counsel), for defendant.

Joseph A. Barrett and Christopher J. Weldon, both of New York City, for complainant.

HICKS, Justice (sitting as a magistrate).

Defendant is charged with violating Sec. 1530, subd. 1, of the Penal Law by keeping dogs, cats and donkeys in such a manner that they are a public nuisance. She moves to dismiss the information as defective and not supported by the depositions of complaining witnesses taken on preliminary examination.

[1, 2] The statute defines a public nuisance as an unlawful act or omission to perform a duty, which act or omission annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons. The information states that at least seven persons living at complainants' homes and other people residing on or near Saw Mill River Road and Shingle House Road have been annoyed. The number of persons described is sufficient. People v. Kings County Iron Foundry, 209 N.Y. 207, 102 N.E. 598. The words "a considerable number of persons" need not be used. The statute does not require that a very great number nor any particular number of persons be disturbed. People v. Rubenfeld, 254 N.Y. 245, 247, 172 N.E. 485.

[3, 4] Even an information deficient in that respect should not be dismissed if the evidence taken before the magistrate proves the commission of a crime. People v. Shenk, Spec.Sess., 142 N.Y.S. 1081, 1083. Defendant's contention that there was no proof of certain facts charged in the information and that, unless the entire charge is established the whole proceeding fails, has no merit. When there is prima facie evidence of any crime, the magistrate must hold the defendant. People on Complaint of McGovern v. Weisbard, 139 Misc. 385, 248 N.Y.S. 399, 402; Code Cr.Proc. Sec. 208. People v. Grogan, 260

N.Y. 138, 183 N.E. 273, 86 A.L.R. 1266, cited by defendant, does not deal with proceedings before a magistrate. In that case Judge Crane said, 260 N.Y. at page 143, 183 N.E. at page 275, 86 A.L.R. 1266: "We cannot *try* a defendant on a charge of committing an act constituting a crime and then prove him guilty of another act of which he has not been charged." (Italics supplied).

[5] A preliminary hearing before a magistrate is not a trial. People v. Taylor, 159 Misc. 536, 289 N.Y.S. 668, also cited by defendant, illustrates the rule of People v. Shenk, supra. The dictum of the Taylor case, 289 N.Y.S. at page 671, is that an information may lack elements essential to support a warrant of arrest and trial but, nevertheless, may confer jurisdiction on a magistrate to conduct a preliminary hearing and, if the depositions taken at the hearing supply the lacking elements, the defendant may be required to stand trial.

Amt Proof needed to establish public nuisance

Distinctions Bet. Public + Private

[6-9] Defendant correctly maintains that the quantum of proof required to establish the crime of maintaining a public nuisance is greater than that needed to prove a prima facie case of private nuisance. There are several distinctions between public and private nuisances. One is that, although individuals may sue to enjoin a nuisance that invades private rights, no prosecution lies unless the nuisance interferes with rights common to the general public. Another is that in a suit to abate a nuisance arising from the conduct of a lawful business proof that the defendant acted negligently may not be required (Bohan v. Port Jervis Gas-Light Co., 122 N.Y. 18, 25 N.E. 246, 9 L.R.A. 711) but in a criminal prosecution evidence of improper or defective methods is essential. A lawful business, properly conducted, is not a public nuisance. People v. Dayton Cleaners & Dyers Corp., 251 App.Div. 332, 296 N.Y.S. 129; People v. Vandewater, 250 N.Y. 83, 89, 164 N.E. 864.

[10, 11] Defendant's occupation is lawful. There must be evidence of the invasion of a public right and proof that the annoyance caused by defendant's lawful activities might, with care, have been modified or avoided, before she may be held to answer the charge of maintaining a public nuisance.

She keeps an animal shelter on a 41 acre farm at Millwood. There are about 43 houses in the immediate neighborhood. The shelter harbours at least 12 dogs, 2 donkeys, some horses and goats. Most of the complainants keep dogs. The district is classified as "Residence A" by the town zoning ordinance which limits the use of property in "A" district to single family dwellings, farming, greenhouses and other uses customary in a residential zone. Defendant's use of her property antedates the ordinance and is not subject to its restrictions. The area affected by the acts complained of is a high class, residential community, the primary purpose of which is safe, healthful and comfortable family life. People v. Gold, Spec.Sess., 6 N.Y.S.2d 264, 269.

Defendant's dogs bark and howl incessantly, preventing sleep at night and making relaxation difficult by day. The noise penetrates the dwellings and extends to the adjacent highways. Its volume is swelled by the braying of donkeys. Cats, some of them diseased, stray from defendant's farm to adjoining lands where they destroy birds. Nine widely separated residents of Shingle House Road and Saw Mill River Road testified that they and their families were disturbed.

This is not a private nuisance. It is a condition that interferes with the normal life of a whole community. People v. Rubenfeld, supra.

[12] The evidence of improper acts or omissions is not so clear but there is enough to require its submission to a jury. An expert testified that, although dogs in kennels will bark, one or two men should be able to quiet them. An S. P. C. A. official expressed the opinion that dogs will remain quiet if properly fed and bedded down at night. The complainants keep and breed dogs but their barking is comparatively infrequent and does not disturb the neighborhood.

The diseased cats, which may be a health menace, should be fenced in and not allowed to forage at large. If dogs in commercial kennels can, as a rule, be quieted and if defendant's neighbors can keep and breed dogs without annoying the community, a jury might find that defendant could use more effective methods to restrain the animals in her charge.

[13] The right to keep animals carries with it an obligation to use reasonable efforts to prevent them from injuring the public. Neither the worthy object of defendant's enterprise (People v. Hess, 110 Misc. 76, 179 N.Y.S. 734, 738) nor the fact that it is lawful and customary to have animals in a country residential district, relieve her of that duty.

The motion to dismiss is denied.

MILLER v. NEW ENGLAND MUT. LIFE INS. CO.

Supreme Court, Special Term, Sullivan County.

March 28, 1939.

1. Discovery 🔑89

Under statute authorizing a court to compel discovery of any article "relating to the merits of the action," only such articles as are admissible in evidence relate to merits of action. Civil Practice Act, § 324.

2. Discovery 🔑85

The application of the discovery statute rests in sound discretion of court, which should be controlled by general purpose of the statute, circumstances of particular case, and trend of liberalized practice. Civil Practice Act, § 324.

3. Discovery 🔑86(1)

One of the purposes of the statute granting to a court of record power to compel discovery of "any article of property relating to the merits of the action of the defense therein" is to permit a party to obtain information respecting true character of claim made by opposing party. Civil Practice Act, § 324.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v. DAVID RUBENFELD, Appellant.

Crimes — nuisance — number of persons affected by act need not be very great to constitute it a public nuisance — evidence that defendant managed business from which came sounds of tumult, revelry, drums and brasses at night, disturbing sleep of dwellers in neighborhood, sufficient to sustain conviction of maintaining public nuisance.

1. Under subdivision 1 of section 1530 of the Penal Law declaring to be a public nuisance an act which "annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons," to be reckoned as "considerable" the number of persons affected need not be shown to be very great. Enough that so many are touched by the offense and in ways so indiscriminate and general that the multiplied annoyance may not unreasonably be classified as a wrong to the community.

2. Evidence that defendant was manager of a business occupying a three-story building in a populous residential district of the city of New York, in which dances, weddings and other entertainments were given, one on each story, beginning in the evening and continuing till dawn, with sounds of revelry, tumult, shouting and of drums and brasses, disturbing the sleep of those living in the vicinity, is sufficient to sustain a judgment convicting him of the crime of maintaining a public nuisance.

People v. *Rubenfeld*, 228 App. Div. 771, affirmed.

(Argued June 9, 1930; decided July 8, 1930.)

APPEAL, by permission, from a judgment of the Appellate Division of the Supreme Court in the first judicial department, entered February 28, 1930, unanimously affirming a judgment of the Court of Special Sessions of the City of New York convicting the defendant of a violation of section 1530 of the Penal Law in maintaining a public nuisance.

Walter A. Lynch and *Hugo I. Epstein* for appellant. The evidence of the witnesses for the prosecution did not establish the crime of maintaining a public nuisance. The evidence did not establish that the acts alleged in the information annoyed, injured or endangered the comfort, repose, health or safety of any considerable number of persons. (*People* v. *Kings Co. Iron Foundry*, 209 N. Y. 207; *People* v. *Cooper*, 200 App. Div. 413.) There is no evidence that the operation of Paramount Mansion resulted in annoyance or inconvenience to any person in a public place. Interference with people in the comfortable enjoyment of their homes may constitute a private nuisance, which does not become public merely because a considerable number may be so affected. (*People* v. *Transit Development Co.*, 131 App. Div. 174.) The judgment of conviction was contrary to the law and the evidence. (*Melker* v. *City of New York*, 190 N. Y. 481.)

Thomas C. T. Crain, District Attorney (*Robert Daru* of counsel), for respondent. The lawful business of running a catering establishment when three loud and large brass bands are permitted to play different tunes at once and until four o'clock in the morning, together with other avoidable and unnecessary noises, becomes a public nuisance where it annoys and disturbs a considerable number of people in their residences, and a considerable number of witnesses are not necessary to prove that a considerable number of persons were so annoyed, injured or endangered in their comfort, repose, health and safety. (*People* v. *Hess*, 110 Misc. Rep. 76; *Davis* v. *Sawyer*, 133 Mass. 289; *People* v. *Weeks*, 172 App. Div. 117; *Bohan* v. *Port Jervis Gas Light Co.*, 122 N. Y. 18.)

CARDOZO, Ch. J. The defendant stands convicted of maintaining a public nuisance in the city of New York.

At the northwest corner of One Hundred and Eighty-third street and St. Nicholas avenue, a caterer, the Paramount Mansion Company, occupies a three-story building for the uses of its business. The defendant is the manager. There are dances, weddings and other entertainments, one on each story, beginning in the evening and continuing till dawn. The sounds of revelry by night, to the accompaniment of drums and brasses, assail the quiet of the vicinage. Neighbors in the apartment houses to the right and to the left describe the tumult and the shouting with the disturbance of their sleep. A neighbor across the street bears witness to the same effect. A traveler on the highway heard the noise a block away. The district is a populous one in which many have their homes.

By the Penal Law of the State, an act which "annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons" is declared to be "a public nuisance," and punishable as a crime (Penal Law, § 1530, subd. 1). The definition corresponds to the distinction between public and private nuisances as it stood at common law (*People* v. *Kings County Iron Foundry*, 209 N. Y. 207, 210). To be reckoned as "considerable," the number of persons affected need not be shown to be "very great" (*People* v. *Kings County Iron Foundry, supra*). Enough that so many are touched by the offense and in ways so indiscriminate and general that the multiplied annoyance may not unreasonably be classified as a wrong to the community. Public is the nuisance whereby "a public right or privilege common to every person in the community is interrupted or interfered with," as by the obstruction of a public way (*Wesson* v. *Washburn Iron Co.*, 13 Allen, 95, 102). Public also is the nuisance committed "in such place and in such manner that the aggregation of private injuries becomes so great and extensive as to constitute a public annoyance and inconvenience, and a wrong against the community, which may be properly the subject of a public prosecution" (*Wesson* v. *Washburn Iron Co., supra*; cf. Wood on Nuisances [2d ed.], § 71, and cases cited).

Def corresponds
to distinction betw
public + private
nuisances as
it stood

* Public

Issue
1) aggregation
so great as to
constitute public
annoyance +
inconvenience
2) + wrong against
community

Long ago it was adjudged that one dwelling in a city who with the aid of a speaking trumpet made great noises in the night time to the disturbance of the neighborhood, must answer to the King (*Rex* v. *Smith,* [1726] 2 Strange, 704). The precedent is not one to be hastily renounced in days when trumpets have a power unknown to a simpler age. Public also was the nuisance where works were so conducted that the air became impregnated with "noisome stinks and smells" (*Rex* v. *White,* [1757] 1 Burrows, 333).

We have gone back to early days, but not for dearth of modern instances.

A piggery so maintained that "the occupation of the neighboring houses and passage over the adjacent highways" became "disagreeable, or worse" was stigmatized by HOLMES, J., as an indictable offense with copious references to precedents of early times and modern (*Commonwealth* v. *Perry,* 139 Mass. 198).

SHAW, Ch. J., thought the like of a fat rendering factory defiling the surrounding air. (*Commonwealth* v. *Brown,* 13 Metc. 365.)

The ruling was the same, and pronounced by the same court, when the annoyance was a public outcry (*Commonwealth* v. *Smith,* 6 Cush. 80; *Commonwealth* v. *Oaks,* 113 Mass. 8, 9).

The organs of smell and hearing, assailed by sounds and odors too pungent to be borne, have been ever favored of the law (cf. *Bohan* v. *Port Jervis Gaslight Co.* 122 N. Y. 18; *McCarty* v. *Natural Carbonic Gas Co.,* 189 N. Y. 40), more conspicuously, it seems, than sight, which perhaps is more inured to what is ugly or disfigured (*Woodstock Burying Ground Assn.* v. *Hager,* 68 Vt. 488). Even so, the test for all the senses, for sight as well as smell and hearing, has been the effect of the offensive practice upon the reasonable man or woman of average sensibilities (*Baltimore & Potomac R. R. Co.* v. *Fifth Baptist Church,* 108 U. S. 317). One of the unsettled questions of the law is the extent to which the concept of nuisance may be enlarged by legislation so as to give protection to sensibilities that are merely cultural or æsthetic. The question need not be answered to decide the case at hand.

We think the area of this tumult, the range of its disturbing power, is wide enough to bring it within the category of an offense to the community, or so the triers of the facts might find. Here is something more than an interference with a single dwelling or even two or three. Here is tumult so great, if the witnesses are to be credited, as to be a plague to a whole neighborhood.

speaks of
interference of
1, 2, 3

The judgment should be affirmed.

POUND, CRANE, LEHMAN, KELLOGG, O'BRIEN and HUBBS, JJ., concur.

Judgment affirmed.

THE PEOPLE OF THE STATE OF NEW YORK ex rel. HAROLD MARCLEY, Respondent, *v.* LEWIS E. LAWES, as Warden of Sing Sing Prison, et al., Appellants.

Crimes — sentence — finality of judgment establishing each prior conviction necessary before prisoner regarded as fourth offender — prisoner not convicted of felony, within meaning of statute providing imprisonment for life for fourth offense, where sentence had been suspended.

1. Under section 1942 of the Penal Law providing that a person who, after having been three times convicted of felonies or attempts to commit felonies, commits a felony in this State shall, upon conviction, be sentenced to life imprisonment, the finality of a judgment establishing each of the prior convictions should be present, before a prisoner is regarded as a fourth offender and subject to the provisions of the statute.

2. Relator, who, upon three separate pleas of guilty to felonies, twice had sentence suspended and once had been sentenced to prison, upon a fourth plea of guilty to a charge, constituting a felony, was improperly sentenced to life imprisonment as a fourth offender. In the cases where sentence had been suspended he had not been con-

with reference to ballots that have been returned as void, to be issued "in the same manner," it necessarily means a writ issued upon the application of a candidate and not of any other person. A writ issued upon the relation of a party who was simply interested in the result of an action could not be said to be a like writ issued in the same manner as one which could only be issued upon the application of a candidate.

It is not difficult to appreciate the force of the argument made in behalf of the relator that there is no justice or logic in permitting a candidate for some inconsequential office to sue out such a writ as this and then to withhold such right from a person like the relator in the case of an election which may involve very substantial rights and interests for him. But this argument must be addressed to the legislature rather than to the courts. As has already been said, in such a case as this the right to the writ depends on legislative enactment, and if the legislature as a result of fixed policy or inadvertent omission fails to give such privilege, we have no power to supply the omission.

The orders appealed from should be reversed, with costs, and the application for the writ denied, with ten dollars costs.

CULLEN, Ch. J., GRAY, WILLARD BARTLETT, CHASE, HOGAN and MILLER, JJ., concur.

Orders reversed, etc.

THE PEOPLE OF THE STATE OF NEW YORK, Appellant, v. KINGS COUNTY IRON FOUNDRY, Respondent.

Crimes — public nuisance — indictment examined and held sufficient.

On examination of an indictment for nuisance, *held*, *first*, that the statement therein that the offense was committed in "the borough, city and county aforesaid" is sufficient when the county in which the offense was committed has been theretofore stated;

second, the charge in the indictment that the acts of the defendant injured and endangered the comfort, repose, health and safety of the persons using the streets and living in the dwellings, buildings and premises in the neighborhood is a sufficient allegation that they injured the comfort, repose, health and safety of a considerable number of persons. (Penal Law, § 1530, subd. 4.) *People* v. *Transit Development Company*, 131 App. Div. 174, distinguished.

People v. *Kings Co. Iron Foundry*, 156 App. Div. 912, reversed.

(Argued June 9, 1913; decided June 20, 1913.)

APPEAL from an order of the Appellate Divison of the Supreme Court in the second judicial department, entered April 11, 1913, which affirmed a judgment of the Kings County Court sustaining a demurrer to an indictment charging the defendant with maintaining a public nuisance.

The demurrer interposed by the defendant specifies three grounds: "*First.* On the ground that it appears on the face thereof that the grand jury by which it was found had no legal authority to inquire into the crime charged, by reason of its not being within the local jurisdiction of the county. *Second.* On the ground that the said indictment does not conform substantially to the requirements of section 275 of the Code of Criminal Procedure, in that it does not contain a plain and concise statement of the act constituting the crime. *Third.* On the ground that the facts stated in the said indictment do not constitute a crime."

James C. Cropsey, District Attorney (*Hersey Egginton* and *Harry G. Anderson* of counsel), for appellant. The indictment herein sufficiently sets forth facts constituting the crime of maintaining a public nuisance, whether tested by the rules prevailing under the common law or those established by the Penal Law. (3 Black. Com. 216; 4 Black. Com. 166, 167; *Bohan* v. *Port Jervis Gas Light Co.*, 122 N. Y. 22; *Lansing* v. *Smith*, 4 Wend. 9; 1 Wood on Nuisances [3d ed.], §§ 14, 17; *Rex* v. *White*, 1 Burr, 333; 1 Russell on Crimes [6th ed.], 732;

Joyce on Law of Nuis. §§ 5, 14; Hawkins P. C. ch. 75, § 10; *Rex* v. *Pappineau*, 2 Str. 686; *Rex* v. *White & Ward*, 1 Burr, 333; *Nolan* v. *City of New Britain*, 69 Conn. 668; *Jones* v. *City of Chanute*, 63 Kan. 243; *Vil. of Pine City* v. *Munch*, 42 Minn. 342; *Kissell* v. *Lewis*, 156 Ind. 233; *King* v. *Davenport*, 98 Ill. 305; *Moses* v. *State*, 58 Ind. 185; *Burlington* v. *Stockwell*, 5 Kan. App. 569.) The County Court of Kings county and the grand jury impaneled by it had jurisdiction to find and file the indictment herein, and its finding is conclusive that the crime charged was committed within the county of Kings. (*P., etc., R. Co.* v. *State*, 20 Md. 157; *People* v. *Buddensieck*, 4 N. Y. Cr. Rep. 230; 103 N. Y. 487; *Vanderwerker* v. *People*, 5 Wend. 530, 531; *People* v. *Breese*, 7 Cow. 429; *People* v. *Barrett*, 1 Johns. 66; *Haskins* v. *People*, 16 N. Y. 344; Joyce on Indictments, § 175; *People* v. *Peck*, 2 N. Y. Cr. Rep. 314; *People* v. *Dimick*, 107 N. Y. 13.)

Louis Marshall for respondent. The indictment fails to show that the grand jury which presented it had jurisdiction over the offense charged. (Code Crim. Pro. § 284, subd. 4.) The indictment fails to show the commission of the crime of maintaining a public nuisance within the definition of section 1530 of the Penal Law. (*State* v. *Houck*, 73 Ind. 37; *M. & E. R. R. Co.* v. *State*, 36 N. J. L. 553; *People* v. *Sands*, 1 Johns. 78; *Messerschmidt* v. *People*, 46 Mich. 437; *People* v. *T. D. Co.*, 131 App. Div. 174; Wood on Nuisances [3d ed.], § 71; *People* v. *Bink*, 151 App. Div. 271; *People* v. *Callahan*, 23 Hun, 586; *Santa Cruz* v. *Enright*, 95 Cal. 105; *Baily* v. *Birkhofer*, 123 Iowa, 59; *West C. St. Ry. Co.* v. *Vandehouten*, 58 Ill. App. 318.)

CULLEN, Ch. J. We think the indictment in this case was sufficient. We cannot see the force of the claim that the indictment fails to show that the grand jury had jurisdiction to inquire into the offense. It is charged in the indictment that the offense was committed in the borough, city and county aforesaid. It is true no borough or city is stated in the indictment, but the county aforesaid is stated to be the county of Kings, and by law the county of Kings constitutes the borough of Brooklyn in the city of New York. The second objection to the indictment, for which it has been held defective by the courts below, is that it fails to state that the acts charged injured and endangered the comfort, repose, health and safety of "a considerable number of persons." The indictment is in the common-law form appropriate to the offense, and unless the offense has been changed in some element or factor requisite to constitute its commission, that form should be held sufficient. (*People* v. *Conroy*, 97 N. Y. 62; *People* v. *Willett*, 102 N. Y. 251; *People* v. *Giblin*, 115 N. Y. 196.) We are entirely clear that it was not the intention by the Penal Law (Section 1530, subd. 4) to add any new element to what was previously necessary to constitute a public nuisance. The expression "any considerable number of persons" is used solely for the purpose of differentiating a public nuisance, which is subject to indictment, from a private nuisance. But a considerable number of persons does not necessarily mean a very great or any particular number of persons. The travelers on a highway of a sparsely settled country town and those moving along the densely thronged city street are equally a considerable number of persons, and an illegal obstruction of a highway in the town and that of a city street are equally public nuisances.

Elements

§1530(4) compared to § 385

How many persons to constitute public

The charge in the indictment that the acts of the defendant injured and endangered the comfort, repose, health and safety of the persons using the streets and living in the dwellings, buildings and premises in the neighborhood is a sufficient allegation that they injured the comfort, repose, health and safety of a considerable number of persons. If the nuisance affects only private property the question whether the number of persons affected is considerable will be one of fact to be determined on the trial. We find nothing in *People* v. *Transit Development Company* (131 App. Div. 174) inconsistent with these views. That case deals with a different question from the one before us.

The judgment below should be reversed, the demurrer overruled and the defendant be directed to plead to the indictment.

GRAY, WERNER, HISCOCK, COLLIN, CUDDEBACK and MILLER, JJ., concur.

Judgment reversed, etc.

JULIUS C. DRUCKLIEB, Respondent, *v.* SAM H. HARRIS, INCORPORATED, et al., Appellants.

Corporation — stockholder's contract that in case of disagreement the stocks owned by one of such stockholders should be purchased at the book value thereof — unauthorized reduction of such book value — court of equity cannot compel restoration of book value or enjoin changes in plan of bookkeeping.

1. Where one stockholder contracts with another stockholder of a corporation for the purchase and sale of shares of stock at the book value as shown on the accounts of the corporation, such a contract does not require or justify the intervention of a court of equity in the management and control of the books of account of the corporation.

2. On the organization of a corporation to which plaintiff paid in a sum in cash and one of the defendants assigned certain assets, it was agreed that in case of any breach of the agreement by the directors of the company, such defendant would purchase from the plaintiff at the latter's election the shares of stock held by him at the existing book value of the same as shown at the time of such election. The relief demanded in this action is that the individual defendants and the defendant corporation be compelled to restore the books of account to their original condition, that the reduction of the value of the good will be canceled, and that the defendants and the corporation be enjoined from making or changing the accounts of the corporation or the books of account whereby the book value of the capital stock of the corporation be reduced contrary to the fact. *Held*, that the action cannot be maintained.

Drucklieb v. *Harris*, 155 App. Div. 83, reversed.

(Argued June 5, 1913; decided June 20, 1913.)

Notes on §1530 Public Nuisance

~~Statement of law pertinent to case~~
Gen'l Discussion on ~~law~~

call
– Loose leaf Service
on Fair employment &
Equal Opportunities

① There is no case ~~which~~ is concerning §1530 which is close to the particular situation here. In fact under the common law definitions of nuisance (see definitions by Blackstone in People v Transit Development at 301, Soltau v Delfeld also at 301 and Stephen in Prosser at p 3 in my notes), ~~Both~~ The cases and the common law definitions generally show a public nuisance to be the use of one's own property to such an extent as to cause an interference on the general public at large. The typical situation is the use of a factory spewing noisome odors in the air or the obstruction of a public highway. The general definitions of public doe not cover the facts of our case. As long as the general public was not denied access to the Commissioner's Office and as long as the Commissioner was able to go about his duties it would not seem that the public as a whole, or as the number considered to be affected by a "public" nuisance were inconvenienced [See Shaw's Jewelry Shop v NY Herald p1 where crowds of people did cause public nuisance]

Cardozo in People v Rubenfeld p.247

Prosser on Standard p3 notes

Schoenberg: as dist. from private nuisance

② Penal Law §385 The precurser of §1530 is interpreted in Melker v City NY - notes p 4, People v Eckerson at p 421-422 and People v Transit Development at 301-302.

See prosser for untravelled highway

3. How many persons constitute public - See People v Kings Co. Iron Foundry at 210. The most commonly quoted ~~definition~~ statement of what constitutes the number of persons needed to be a public offense is Cardozo's statement in People v Rubenfeld at p.247 ~~In they~~ In People v Ehrlich ~~the most~~ seven people disturbed by dogs was found sufficient to be a public nuisance. The most common example to show that the whole public is not included is the interference by one on a ~~E~~ sparsely travelled public

Slow access to hyw

highway. This as well as The Ehlich Case ~~The~~ differs from the present case however in that the key to a public nuisance is the indiscriminate interference. [Also highway is unlawful act per se] In the present case the interference was directed only to the four secretaries in the office and not the general public: The argument against this will be that the interference of ~~against~~ the functioning of a public institution was against the public as a whole. This argument is attuned to ~~the~~ §1530 which calls public nuisance a crime against the order and economy of the state. However a substantial number of persons were not interfered with indiscriminately. Another argument against §1530 is that picketing is an expression of free speech and is not unlawful per se, that it is more important to the public to picket than the minor intrusion upon public property.

UNLAWFUL CONDUCT

4. The 1959 case of McKenna v Allied Chemical + Dye (p1) stresses the importance that the conduct be unlawful. Under §385, it was also essential that the conduct be of a criminal nature and unlawfully done (People v Eckerson). In the present case the conduct was not in its nature illegal. The picketers were permitted entrance into the office to begin with and picketing itself is lawful conduct. §1530(4) is much to vague to be used to declare the conduct as illegal, for no standards of illegality are set up.

5. ~~The~~ A main argument of the memorandum I feel should be that the case has nothing to do with a "public nuisance" whatsoever either under the common law history of Public Nuisance ~~n~~or under §1530 as it has been applied. If anything the acts involved were trespass or perhaps private nuisance. ~~Even~~

59 Col L. Rev 457

Page Keeton Trespass, Nuisance, and Strict Liability

People v Hess 110 Misc 76, 179 NYS 734 - Public nuisance: offense to The public of a neighborhood or community in The enjoyment of its common rights, and not as a definition of an offense which consists merely of injury to a large number of persons in enjoyment of private rts.

Continuity or recurrence: Nuisance as a general rule, involves The idea of continuity or recurrence. Some degree of permanence essential - Metro Life Ins v Moldoff 187 Misc 458, 63 NYS 2d 385

UNLAWFUL ACT: To constitute a public nuisance, The act complained of must be unlawful in itself = Key word

③

Prosser on ~~Tor~~ Nuisance Ch 17 - Book on Torts

592 Incapable of exact definition - Discusses how cts have used word as a catchall for every kind of problem

594 Definition of Public Nuisance: A species of catch-all criminal offense, consisting of an interference with The rights of The community at large.

597 Great majority of nuisance suits have been in equity and concerned primarily with The prevention of future damage.

598 Both public and private nuisances require some substantial interference with The interest involved.

599 STANDARD: The standard must necessarily be That of definite offensiveness, inconvenience or annoyance to The normal person in The community — ~~The nuisance~~

602 Reasonableness of Defendant's Conduct - The interference with The protected interest must not only be substantial, but it must also be unreasonable.

605 Definition Public Nuisance: Stephen: General View of The Criminal Law of England, 1890 p. 105:

An act or omission "which obstructs or causes inconvenience or damage to The public in The exercise of rights common to all Her Majesty's subjects."

NUMBER PEOPLE

{In present situation, can compare The obstruction of a public highway, which inconveniences only Those who travel upon it, it is a public highway = No question of The number of people - Argument opposing: The highway case is illegal per se whereas The picketing here is not. Argue That the Commissioner was not enjoined from doing his business nor were other visitors (The public) hindered

④

Melker v City of N.Y 190 NY 481 at 488, 83 NE 565 (1908)

"The primary meaning of the word, suggested by its derivation is that which injures, or, in the quaint phrase of ancient times, "that which worketh hurt." The injury may be to person or property, to health, comfort, safety or morality. It may be a crime (Penal Code, § 385) [Courts of high standing have held that a nuisance at law, or a nuisance per se, exists only when the act done is a nuisance at all times and under any circumstance, regardless of location or surroundings. Other courts make fitness of locality the standard and give controlling effect to surrounding circumstances, holding certain acts not permissible as matter of law under some circumstances, but permissible under others and under others still not permissible if the jury find them nuisances as matter of fact"

93 ALR

Each case depends on its own facts. 489 Locality, surroundings, methods, degree of danger + custom of country are important factors

Distinction Between Public + Private Nuisance as applied to §1530

Town Mt Pleasant v Van Tassel Sup Ct 166 NYS 2d 458 - 1957 at 462

The nuisance is a common or public nuisance as distinguished from a mere private nuisance where the location at which + the manner in which the business is conducted is such that it causes substantial annoyance and discomfort indiscriminately to many and divers persons who are continually or may from time to time be in the vicinity. = Case where piggery was nuisance

People on Complaint of Scheinberg v Churnin . City Ct 132 NYS 2d 568 1952

Prosecution where operator of dry cleaning store was charged w maintaining a public nuisance in that he allowed noxious odors to escape

— A nuisance is a "public nuisance" where it affects its enjoyment by citizens as part of the public — A private nuisance is one that affects a single individual or a determinate number of persons in enjoyment of some private right not common to public

⑤

Metropolitan Life Ins. Co. v Moldoff · Sup Ct App Term 1st Dept 63 NYS2d 385 1946

Summary proceeding instituted by landlord alleging term of tenancy had expired + that the tenants held over + continue in poss w/o consent. Tenancy was terminated for what landlord ~~and~~ maintained was a nuisance: Wife had attempted suicide + danger of repetition w possible injury to others in apt was nuisance:

As a general rule, a nuisance is a conscious and deliberate act and involves the idea of continuity or recurrence; "some degree of permanence is an essential element of the conception of nuisance"

FORD v GRAND UNION Co. 270 NYS 162, 240 App Div 294 (1934)

Generally "nuisance" involves idea of continuity or recurrence though it is not always necessary that act complained of should be habitual or periodical.

CANFIELD v QUALE 10 NYS2d 781, 170 Misc 621 (1939)

A danger or damage threatening the public is classified as a "common nuisance" whereas if it threatens one person or a few it is classified as a private nuisance —

NY Trap Rock Corp v Town of Clarkstown 299 NY 77, 85 NE2d 873. (1949)

Town brought act to restrain quarrying + blasting operations.

Powers expressly granted to a town to act generally in promoting health, safety, morals, or general welfare of community imply existence of further power to bring an action to restrain a nuisance affecting public health when in judgment of representatives of town such action is vitally necessary for protection of health of its inhabitants.

①

Don't forget permanency

I. Common law definitions of nuisance :: Use of one's own property as to cause an interference on gen'l public at large

Rubenfeld 1530 follows common law - People v Rubenfeld 247

as dist. from private nuisance

III ~~Statute~~ Statute's calling "considerable" number + definition public

See Highway cg

II. Conduct must be unlawful + Continuity:

Ford v Grand Union, Canfield v Quale p.5

I. Under the common law definition, a public nuisance is the use ~~act, or~~ of one's own property or the unlawful conduct by an individual to ~~such an extent as to~~ cause (a substantial and unreasonable ~~or~~ unlawful) interference on or injury + indiscriminate injury or interference to the general public ~~at large~~. §1530 of the Penal Code of the State of New York ~~adopts~~ is an adaptation of the common law definition. ~~of public nuisance~~

A public nuisance under the common law definition and the rule of New York is a criminal offense, consisting of the interference of the rights of the public at large. History 155 which in its nature or consequences is a nuisance, an injury ~~or~~ a damage to all persons who come w/i the sphere of its operation. ~~His public~~ [People v Transit Development] Blackstone defined a public nuisance to be nuisances "which affect the public and are an annoyance to all the King's subjects.

Fund Def in Blackstone

[See People v Transit Development Co, 131]. ~~The~~ Stephen defined ~~the~~ a public nuisance as an act or omission "which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects" (General View of Crim law Eng, 1890 p.105)

~~The basic issue in~~ In the present case: if the infringements were on individuals in a private office or industry, the ~~action~~ inconvenience would be a private nuisance. The basic issue in this case is whether any action or conduct which infringes the state, ~~automatically~~ becomes an ~~act~~ ~~infri~~ indiscriminate infringement on the common rights of the public. If this ~~par~~ view is accepted, then the distinction between a public and private nuisance for all practical purposes has been abolished. However case law interpretations of §1530 have reached the opposite conclusion. People v Rubenfield, ~~[illegible]~~ specifically said, "~~It public~~ The definition (of a public nuisance §1530) corresponds to the distinction between public and private nuisances as it stood at common law."

[The leading english case, Soltau v De Held 9 Eng L+E 104 at 111) defined public nuisance as a thing which "in its nature or its consequences is a nuisance, an injury or a damage to all persons who come w/i the sphere of its operation, though it may be in greater or less degrees."]

Subst. Scheinberg

The public nuisance is contrasted with the private nuisance ~~which~~ the latter being ~~is~~ an act against an individual or group of individuals in their private capacities, and is founded on the violation of ~~[illegible]~~ a private right. (Scheinberg)) Under the common law the standard of public nuisance must be of definite offensiveness, inconvenience or annoyance to the normal person in the community. The interference with the protected interest must be not only substantial but also unreasonable [Prosser on Torts 2nd ed. 599-602].

A Typical case~~s~~ of public nuisance involves the use of one's own property to cause ~~There are many cases on the public nuisance. The typical case is~~ injury to the public as where ~~that of~~ a factory spewing fumes, or emanating odors or sounds from the premises which cause ~~a~~ permanent disturbance in the surrounding area ~~or inconvenience upon~~ (The injury is permanent, substantial and indiscriminately inflicted, a "public nuisance" occurs. ~~The public at large.~~ A second example of public nuisance is where ~~would be the obstruction of a~~ the individual engages in unlawful conduct which inconveniences the public as where he obstructs a public highway. The injury may be to person or property, to health comfort, safety or morality. Walker v City of N.Y. ( )

III. A "considerable number of persons" ~~doc~~ ~~required~~ as specified in §1530 does not ~~refer to~~ imply a ~~any~~ very great or particular number of persons but refers to the distinction between public and private nuisance ~~in that the~~ ~~That ax~~ of the common law. A In a public nuisance the acts ~~the~~ against persons indiscriminately in their capacity as member of the general public. ~~as opposed to a private injury~~ ~~The common law distinctions between public + private nuisance has been maintained in~~ §1530

The expression "a considerable number of persons does not necessarily mean a great or ~~certain~~ particular number of persons; ~~rather~~ it pertains to acts which is an offense to the indiscriminately affect people's rts ~~public of a neighbo~~ their common ~~rights, an offense indiscriminately affecting. Thus~~ People v Kings Co Iron Foundry. As justice Cardozo said in People v Rubenfeld, supra at 297 ~~The travelers on a sparsely travelled highway or a densely trafficked city street~~ "Etc ~~to be reckoned~~ ~~are a considerable number of persons if their rts of common travel are interrupted.~~

~~People v. Kings Co Iron Founder 209 NY 106 Thus the distinction between~~ public and private nuisance is not in number but in the type of right that is infringed upon.

To be reckoned as "considerable" the number of persons affected need not be shown to be "very great." Enough that so many are touched by the offense and in ways so indiscriminate + general that the multiplied annoyance may not unreasonably be classified as a wrong to the community. Public is the nuisance whereby a public rt or privilege common to every person in the community is interrupted or interfered with "as by the obstruction of a public way."

The crucial factor is ~~the type of a~~ how the infringement takes place, whether it is indiscriminate action of ~~the par~~ a common rt or a selected infringement on a private right. The common law distinction between public and private nuisance is an integral part of §1530

Memo on §1530
James J. Fishman

I.

A public nuisance under N.Y. ~~the common~~ law ~~definition is the use of one's own property or the unlawful~~ requires conduct by an individual to cause a substantial, unreasonable ~~un~~lawful, and indiscriminate injury or interference to the general public. Section §1530 of the Penal ~~Code~~ Law is an adaptation of the common law definition and is a crime against the state.

A public nuisance under the common law definition ~~and the~~ applied ~~a criminal offense~~, ~~consisting of the rule~~ in New York ~~[illegible]~~ requires ~~[illegible]~~ all interference ~~of~~ with the rights of the public at large. A nuisance by its nature or consequences causes damage to all persons who come within the sphere of its operation. People v. Transit Development, 131 App. Div. 174, 115 N.Y. Supp 297(1909).

Stephen defined a public nuisance as an act or omission "which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects." GENERAL VIEW OF CRIMINAL LAW OF ENGLAND 105 (1890) A leading English case, Soltau v. Deheld 9 Eng L&E 104 at 111 ~~[illegible]~~ defined public nuisance as a thing which "in its nature or its consequence is a nuisance, an injury or a damage to all persons who come within the sphere of its operation, though it may be in greater or less degrees".

~~The~~ A public nuisance is contrasted with ~~the~~ a private nuisance, the latter being an act directed against an individual or group of individuals ~~in their private capacities~~, and is founded on the violation of a private right. People on Complaint of Scheinberg v. Churnin (City Ct. 132 NYS 2d 568 (1952) Under the common law, the standard of public nuisance must be of definite offensiveness, inconvenience, or annoyance to the ~~normal person in the~~ community at large. The interference with the protected interest must be not only ~~substantial~~ unreasonable but also ~~unreasonable.~~ substantial Prosser, TORTS pp599-602 (3d ed.1964)

②

A typical case of public nuisance involves the use of one's own property to cause injury to the public, as where a factory spews fumes or ~~emanates from its premises~~ allows odors or sounds to emanate from its premises which cause a permanent or habitual disturbance in the surrounding area. A second example ~~is where the~~ involves an individual ~~engaged in unlawful conduct~~ who erects a physical barrier which ~~inconveniences~~ obstructs or endangers the general public as where he obstructs access to a public highway. The injury may be to persons or property, to health, comfort, safety or morality. Melker v. City of N.Y. 190 N.Y. 481, 83 N.E. 565 (1908)

pot

§1530 of the penal law of New York is a verbatim derivation of its precursor §385 of the Penal Code of 1901:

*

> A "public nuisance" is a crime against the order and economy of the state and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:
> 1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or
> 2. Offends public decency; or
> 3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or
> 4. In any way renders a considerable number of ppersons insecure in life, or the use of property.

§385 was taken from sections 430 and 431 of the draft code, prepared by the Field Commission and submitted to the legislature in 1865. It is evident from the reports of the commission that they intended only to codify and harmonize existing laws and practice. People v. Transit Development, supra. Justice Cardozo in People V. Rubenfeld 254 NY 245, ~~247~~ (1930) noted that the definition of public nuisance in §1530 corresponds to the distinction between public and private nuisance as it stood at common law.

The elements required for a conviction under ~~§385 were~~ ~~applied~~ §1530 are 1) an act unlawfully done or the performance of a duty omitted which was criminal (a nuisance) in its nature: 2) the defendant committed such act or omitted to perform such duty, and 3) that such act or omission was with ~~the~~ criminal intent on the part of said defendant. People v. Eckerson 133 App. Div. 220, 117 NYS Supp 418, 420 (1909).

~~It was not the intention of §1530 of the Penal Law to add any new element to what was previously necessary to constitute the crime of public nuisance. People v. Kings Co. Iron Foundry, 156 App. Div. 912, 209 NY Supp 207, 210 (1913).~~ ~~The basic~~ The basic elements are that the right interfered with was common to the general public, that a considerable number of people were affected, infra , and that the conduct was unlawful.

II

ALL CAPS →

~~In an action brought~~ Under §1530, the conduct of the individual charged must be a continuing inconvenience and unlawful from its inception.

(Start New ¶ with stuff on other side)

~~The present case does~~ not concern ~~the type of public nuisance caused by the illegal use of one's own property. If the facts are~~ ~~To come under §1530, it must be because the conduct involved~~ ~~must have deprived~~ ~~must have been~~ ~~was unlawful and acted to deprive the public of their common rights. This might would be a the situation where such as the defendant's actions (in a public street caused crowds to gather which denied the plaintiff's right of access. Shaw's Jewelry Shop v. New York Herald 170 App. Div. 504, 156 NY Supp 651 (1919).~~

~~Under §385~~ ~~The elements of the offense required proof of criminality.~~ People v. Eckerson, supra. Stressing the requirement that the ~~need for~~ conduct must have ~~been~~ ~~illegal conduct~~, the court in McKenna v. Allied Chemical & Dye, 8 App. Div. 2nd 463, 188 NYS2d 919 (1959) said that the key word in §1530 was "unlawful" and that the section only applied to intentionally unlawful conduct. Thus in the blocking of the access to the highway situation, the interference was illegal from its commencement. This contrasts with the situation where

~~In the infrequent case in which the alleged nuisance does not arise from~~

As indicated previously, the most common situations in which the charge of "nuisance" under §1530 arises are those in which the defendant makes use of or conducts activities on, his own property which are obnoxious to the community at large. In the uncommon case in which ~~[illegible]~~ the alleged obnoxious activity ~~does~~ not arise on the property of the defendant, it must be shown to be

~~the~~ conduct ~~was~~ is lawful to begin with and then at some later point becomes illegal.

In determining illegal conduct, courts have held that the standard depends upon the locality, surrounding circumstances, methods, and degree of danger. *Melker v. City of New York, supra*. There must be a weighing of the interests of the public against those of the individual. In the present case the balance is between the interest in the public in having state employees work unhindered and the interest in private individuals to make a protest. ~~through picketing~~

Another element in nuisance involves the idea of continuity or recurrence of the offense. Some degree of permanence is an essential factor in the crime. *Metropolitan Life Ins. Co. v. Moldoff* 63 NYS2d 385 (1946)

Conduct proscribed in §1530 must be unlawful from its commencement. Subdivision three of the statute names particular areas where "unlawful" interference will be a public nuisance. At least such standards of unlawful conduct must be maintained in other areas or places not named specifically in the statute. The section is vague as to what constitutes unlawful interference. The phrase "an act which in *any* way renders a considerable number of persons insecure in life, or the use of property," is so nebulous as to set no ~~standards~~ guidelines for the actor once his conduct has begun. A statute which does not establish boundaries of legality ~~will be declared~~ is void for vagueness and a violation of due process. Amsterdam, "The Void for Vagueness Doctrine" 109 *U. Pa. L. Rev.* 67 (1960) This doctrine will be most strictly applied where first amendment freedoms are involved. ~~such as restrictions on picketing~~. §1530 which does not draw limits of lawful and unlawful conduct runs the danger of overbreadth, that is, it is so broad as to sweep almost anything within its scope.

III

A "considerable number of persons" as specified in §1530 does not imply a very great or particular number of persons; rather, it refers to the common law distinction between public and private nuisance in that in a public nuisance the acts are against persons indiscriminately in their capacity as members of the general public.

The expression "a considerable number of persons" does not necessarily mean a great or particular number of persons; it pertains to acts which indiscriminately affect people's rights. People v. Kings Co. Iron Foundry, supra. As Justice Cardozo said in People v. Rubenfeld, supra, at 247:

> To be reckoned as "considerable the number of persons affected need not be shown to be "very great". Enough that so many are touched by the offense and in ways so indiscriminate and general that the multiplied annoyance may not unreasonably be classified as a wrong to the community. Public is the nuisance whereby a public right or privilege common to every person in the community is interrupted or interfered."

The crucial factor is how the infringement takes place, whether it is indiscriminate action or ~~a~~ seleect CONDUCT ~~ed infringement on a private right~~. ~~The~~ This common law distinction between public and private nuisance is an integral part of §1530.

In the present case if the infringements were on individuals working in a private office the inconvenience would most surely be an invasion of a private right. The basic issue ~~in the case at bar~~ is whether any action or conduct which inconveniences ~~infringes~~ the state bureaucracy, becomes an indiscriminate infringement on the common rights of the public. If this view is accepted, than the distinction between public nuisance and private nuisance for all practical purposes has been abolished. On the other hand, ~~case law~~ interpretations of §1530 have reached the opposite conclusion. People v Rubenfeld, supra, specifically stressed that §1530 ~~the~~ corresponds to the distinction between public and private nuisance as it stood at common law.

Memo on 1530

POINT II

ALL CAPS

A public nuisance under New York Law requires conduct by an individual to cause substantial, unreasonable, unlawful, and indiscriminate injury or interference to the general public. Section 1530 of the Penal Law maintains the common law distinction between public and private nuisance.

Section 1530 of the penal law of New York is a verbatim derivative of its precursor section 385 of the Penal Code of 1881:

double indent *

> See page 2 of Fishman Memo for quote of Law

Section 385 was taken from sections 430 and 431 of the draft code, prepared by the Field Commission and submitted to the legislature in 1865. The reports of the Field Commission indicate that they intended only to codify and harmonize existing laws and practice. People v Transit Development 131 App. Div. 174, 115 N.Y. Supp. 297 (1909)

~~A public nuisance~~ The common law definition of public nuisance, applied in New York requires interference with the rights of the public at large. This is to be contrasted with a private nuisance, which is an act directed against an individual or group of individuals, and is founded on the violation of a private right. People on Complaint of Schoenberg v. ~~Cha~~ Charm (City Ct. 132 NYS 2d 568 (1952)

A typical case of public nuisance involves the use of ones property to cause injury to the public, as where a factory ~~spews fumes or~~ allows odors to emanate from its premises ~~[illegible]~~ which cause a permanent or habitual ~~[illegible]~~ disturbance to the surrounding area. A second example involves an individual who ~~obstructs access on a public highway through the~~ endangers the general public by erecting a physical barrier that ~~blocks~~ blocks access to a public ~~highway~~ highway. The public injury may be to persons or property, to ~~health~~ health, comfort, safety, or morality. Melber v. City of N.Y. 190 N.Y. 481, 83 N.E. 565 (1908).

In any case it must be a public injury.

Conversely, if the infringements were on individuals working in a private office, the inconvenience would ~~most~~ most surely be an invasion of a private right. ~~Another example of private nuisance would be [illegible] extremely bright lights or a loud speaker directed [illegible] at a neighbors premises and solely only inconveniencing that person & his family~~

and visitors,

The crucial factor is how the infringement takes place, whether it is indiscriminate ~~[illegible]~~ in its operation or ~~[illegible]~~ selective. ~~conduct~~.

{No new ¶} This distinction between public and private nuisance ~~has~~ always been ~~so~~ followed by ~~the~~ courts ~~in~~ ~~the~~ interpreting ~~[illegible]~~ section 1530 & its predecessors. A "considerable number of persons" as specified in section 1530 does not imply a ~~very great~~ particular no. ~~of persons~~; rather it refers to the common law distinction between public and private nuisance. ~~that~~ As ~~Just~~ Justice Cardozo said in People v. Rubenfield 254 N.Y. 247 (1930)

"To be ~~reckoned~~ reckoned as considerable the number of persons affected need not be shown to be very great. Enough that so many are touched by the offense and in ~~ways~~ ways so indiscriminate and general that the multiplied

POINT III

TO BE A PUBLIC NUISANCE CONDUCT MUST BE HABITUAL OR PERMANENT, & SUBSTANTIAL.

The phrase "act against the order and economy of the State" indicates the breadth of the injury required by ~~the act~~ §1530. ~~[illegible]~~ ~~[illegible]~~ Furthermore ~~[illegible]~~, in order to be punishable under §1530, the conduct must be "systematic & exclusive" (Flynn v. Taylor, 127 N.Y. 596 (1891)), "permanent or habitual" (Davis v. The Mayor of New York, 14 NY 506 (1856)) or "permanent & recurrent" ~~[illegible]~~ (Callanan v. Gilman ~~[illegible]~~, 107 NY 360 (1887)), and must ~~be a or~~ in any event constitute a "substantial impairment" ~~or~~ (Graceland Corp. v. Consolidated Laundries Corp., 7 AD2d 89 (1958)). A purely localized series of acts, known to be temporary in nature and possibly resulting in a ~~[illegible]~~ mere inconveniencing of a few individuals could not constitute a public nuisance. The ~~should~~ [illegible] extension & application of such statutes may result in ~~the~~ rendering them "void for vagueness" in violation of the due process clause of the 14th Amendment.

Respectfully submitted,

Richard A. Marlow
Stephen M. Nagler
Attys. for Defendants